

2001

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Crisis at the Barnes Foundation: A Case Study of Trustee Negligence

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**Submitted in partial fulfillment of the requirements
for the Master's Degree in Museum Professions
Seton Hall University
December 2001**

Throughout the 1990s, the public became aware of a serious problem at the Barnes Foundation. It soon became evident that the trustees, who had no management experience, were determined to break Dr. Barnes' indenture in order to transform the foundation into a museum. What they neglected to consider, however, was that the foundation was created for the purpose of teaching the Albert Barnes' art appreciation philosophy. Moreover, the trustees were expected to administer the property for the benefit of the public as dictated in the foundation's charter; yet, they proceeded to violate nearly all of Dr. Barnes stipulations. The board of trustees is liable to both legal and ethical standards. Although the law allows for the adjustment of stringent provisions, it is designed in a manner that opts for as little modification as necessary in order to stay true to the institution's mission and the donor's intent. Throughout the 1990s, trustees, as a result of their actions and subsequent litigation, brought about increased public awareness to the debacle at the Barnes Foundation. It seemed as though the struggling establishment was on the verge of a collapse. This examination serves as a warning for charitable foundations and explores what can transpire when trustees disregard the importance of ethical and legal codes.

I. Introduction: Implications of Honoring Donor Intent

A foundation's board of trustees holds property that is to be administered for the benefit of the public. This primary obligation requires that each trustee remains obedient to the mission of the institution, and that they respect the reasons why it was established and its purpose. It is not uncommon for a founder to devise a will stipulating the details of a foundation's operations. In some instances, these provisions may be difficult to realize; however, the board has both an ethical and legal obligation to uphold the founder's intent. Unfortunately, the foundation risks failure if the trustees do not sensibly abide by this indenture. It is imperative to comply as closely as possible with a founder's stipulations rather than to disregard them entirely. Once the board cannot remain truthful to a foundation's essential purpose, the organization faces an impending calamity.

If the board determines that a founder's stipulations are too restrictive and thwart an organization's operations, the trustees can petition to alter certain terms of the indenture. Often, this endeavor will be time-consuming and financially straining. The board should expect heightened public awareness and scrutiny. The judicial system and a state's Attorney General are cognizant that a founder's provisions may be too restrictive. Hence, the system acknowledges this common dilemma and enables the board of trustees to petition for the adjustment of certain terms of an indenture. If a board provides ample evidence as to why a stipulation is an impediment, the court will typically devise an alteration. For instance, the court may change admission fees, visitor capacity, investment options, and so forth. However, if the court has reason to believe that the board is petitioning for self interest or if the judge determines that the

board has done little to uphold the provisions, the board is then held accountable for its actions. The state may launch a full investigation if it deems that the board neglected to practice prudent discretion. If the trustees do not adhere to ethical and legal guidelines, the foundation's reputation will be considerably damaged by violating public trust. Additionally, a trustee may be ousted and may also be responsible for financial losses. More importantly, however, a foundation's essence becomes challenged and its respectability questioned. These problems are long lasting since future trustees inherit their predecessor's burden. In addition to resolving financial crisis, the new trustees will be consumed in rectifying previous oversight rather than devoting attention to the organization's future operations and survival. These dilemmas have been encountered at the Barnes Foundation. An in depth study will demonstrate trustee negligence and will stress the significance of ethical and legal duties. It will also examine the basic nature of a trust, trustee responsibility, legal action and trustee liability.

In the late 20th century, the Barnes Foundation in Merion, Pennsylvania faced a grave situation within the institution's doors. Incessant litigation placed the foundation in the spotlight and exposed trustee negligence. Although some, including the trustees, blamed Dr. Barnes' strict indenture for the institution's downfall, it is now clear that the trustees at the Barnes Foundation complicated the situation by persevering to transform and reinvent the foundation into a progressive, highly visible establishment. They premised that a legally binding indenture could be disregarded in an attempt to attain their goals of financial security. This disturbing stance was contrary to the founder's wishes, the core of the foundation's essence and operation. Tedious scrutiny ensued into the foundation's internal affairs and it consequently heightened public awareness of trustee activities.

Between 1912 and 1922, Albert Coombs Barnes established an impressive collection of late 19th and early 20th century art. In fact, he is credited with recognizing the flourishing modern art movement and introducing it into the United States. When Barnes realized the capacity of this artwork to enlighten the lower class, he created the Barnes Foundation. It was meant to be an educational institution that taught Barnes' own "objective method" of art appreciation. The paintings served as the "tools" by which to understand his theory. Dr. Barnes built the foundation in a way that allowed it to endure as an educational entity outside the traditional realm of art institutions. He was insistent on stringent admission and openly acknowledged his dislike of the casual visits of "wanderers." He respected art and wished his collection to be studied and understood according to his philosophy.

After Albert Barnes passed away in 1951, the trustees of the Barnes Foundation were obliged to fulfill his wishes as stipulated in his indenture. Barnes specified that the galleries were to remain intact: no paintings were to be sold, loaned or moved. Additionally, the building and its contents were to be kept in first-class repair. Lastly, four of the five trustees were to be nominated from Lincoln University and the endowment was to be invested in low-risk assets. These provisions proved to be challenging for future trustees and at some point, resulted in misinterpretation. Do strict indentures always foreshadow an institution's demise? Dilemmas may be confronted, but downfall is not a direct consequence if an indenture is responsibly and intuitively followed. The Barnes Foundation, although operating with some court intervention for three decades, did not experience difficulties of the magnitude that occurred in the 1990s. What transpired in that decade that caused such disaster within the establishment?

Throughout the 1990s, the trustees rashly pursued every means to overturn Dr. Barnes's indenture. Indeed, some of its stipulations were unreasonable (such as the terms for investment).

It did not take long for the public, not to mention the State Attorney General, to become aware of the Barnes Foundation's trustees' detrimental actions. It appeared that the trustees were not making sound decisions with the beneficiary, the public, in mind. In fact, the community became outraged when they considered selling several of the collection's paintings.

Soon, the public was losing confidence in this charitable organization. Popular opinion spoke of mismanagement, disorganization and blind ambition at the Barnes. It was further disheartening to discover that the trustees had no previous experience managing an art collection or any art historical knowledge. Each decision that was made provoked scrutiny and a chain of negative consequences. The director openly stated that Barnes's indenture would inevitably cause the foundation to fall short of its essential intent. Interestingly enough, the trustees continued to demonstrate a perfunctory attitude to the foundation's main purpose and they proceeded to disregard the precept of donor intent. Albert Barnes had never conceived to transform the educational foundation into a tourist spot, yet the trustees myopically strove to achieve this end. Obviously, the foundation's critical state is not to be blamed on the indenture, but rather the negligence of the trustees.

Throughout the 1990s, management at the Barnes Foundation failed to perform the fundamental responsibilities of trustees: the duties of care, loyalty and obedience. They especially continued to violate the latter. Instead, they were determined to find expeditious ways of seeking financial stability while transforming the foundation in order to accommodate broad visitor access. In pursuing such an approach, ethical and legal codes were violated. The debacle at the Barnes Foundation unveiled what occurs when trustees do not take their responsibilities of stewardship seriously. They not only lost public confidence, but drove the foundation to a near collapse.

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Due to the irresponsible actions of the Barnes Foundation trustees, one of Dr. Barnes's objectives, educating students, became severely compromised. The students, according to the trustees, were merely an obstacle in terms of the trustees' grand plan. In fact, the director did not even take the Barnesian art program seriously. The courts reiterated that public gallery access had to be arranged in a way that would still accommodate the students without jeopardizing the art appreciation classes. As stated by one observer, "Barnes set up a rigorous educational mission, and it is being undermined by certain people for their own aggrandizement. Barnes was not crazy; he was betrayed."¹ At some point, the confusion and disorder at the Barnes Foundation became a travesty and the public questioned whether the trustees were truly attempting to rescue it. Even the Pennsylvania State Court remarked that the trustees considered "the intent of the donor as a hurdle to be overcome rather than a guiding light."²

Presently, the Barnes Foundation is under new management which is trying to redeem the financially unstable institution. Kimberly Camp, the current director, feels that the previous disarray had been brought about by "ego issues" rather than the foundation itself. She stresses that the foundation is a school, not merely an assemblage of paintings. Thus, she is turning her attention to the educational program and to finding necessary funds for successful operation. The board of trustees has now initiated a tremendous fundraising campaign in order to rescue the foundation. The new director also realizes that the Barnes Foundation must be preserved in order to protect its distinct and unconventional quality. In order to salvage the Barnes Foundation, now valued at over four billion dollars, the current trustees must focus on the institution's educational mission: to promote the advancement of education and the appreciation of fine arts and horticulture.³ As a rule, adherence to a mission statement is paramount since it defines an organization's value system.

The Barnes Foundation can survive future hurdles if grant money is received and if the foundation succeeds to clean its tarnished image. Still, the Barnes Foundation must continue to abide by Dr. Barnes's indenture now that vital amendments have been made. Otherwise, it will lose its uniqueness, a reminder of an eccentric collector with an unconventional pedagogy. If responsible actions are taken, the Barnes Foundation can thrive in the 21st century and overcome past humiliation. In fact, strong and focused leadership will determine not only the success of the Barnes Foundation, but its significance in the art world.

II. Dr. Albert C. Barnes and a Chronicle of the Barnes Foundation

Albert Coombs Barnes was born in 1872 and was raised in Philadelphia during the late nineteenth century. He graduated from the University of Pennsylvania Medical School in 1892 and subsequently went to study pharmacology in Germany in 1900. Upon returning to the United States, he began a pharmaceutical business and supplied medical products directly to physicians and hospitals. His company, Barnes and Hille, was particularly noted for inventing a silver nitrate compound named Argyrol (after the Greek term for silver, *argyros*) which was utilized in fighting infections. After the pharmaceutical firm was dissolved, Barnes acquired sole ownership via a sale. He began collecting artwork after he earned a substantial sum of money by marketing Argyrol. He hired William Glackens, a high school classmate and artist, to purchase art for him in Europe. By 1910, Barnes had amassed a significant amount of art and he purchased a small estate in Merion, Pennsylvania. Barnes took up painting but found that his talent was inadequate. Hence, he turned his attention to the collection. He conceived the idea of housing the pieces in a building devoted to art and its instruction. To this end, Barnes purchased a lot across the street from his home which contained an arboretum. He promised the owner of the land that after the museum was constructed, he would continue to care for the arboretum.

Although Barnes purchased many pieces of art, he always regarded himself as an educator rather than a collector. The galleries were established as "teaching collections."⁴ Most of the art that Barnes collected was considered inferior at the time. Yet, Barnes insisted that the paintings, however different, ought to be studied. The gallery served as "an educational experiment under the principles of modern psychology as applied to education." This "objective

method" was applied to analyze formal value of the art in order to ascertain its pictorial qualities. The Barnes teaching method focuses on the decorative, illustrative and expressive qualities of a piece of art.⁵ Hence, unlike traditional art history, the Barnesian discipline did not explore aspects of an artist's life nor the story behind a piece of art. Dr. Barnes believed that traditional art historical approaches merely offered subjective conclusions. Barnes felt that art appreciation "requires organized effort and systematic study....[and that it] can no more be absorbed by aimless wandering in galleries than can surgery be learned by casual visits to a hospital."⁶

Dr. Barnes especially encouraged the working class, the "plain people...who gain their livelihood by daily toil in shops, factories, schools, stores and similar places" to visit the galleries.⁷ During the 1920s, his collection grew and he is credited with "discovering" various artists including Lipchitz and Soutine. He also began developing an educational program with assistance from the philosopher John Dewey.

In 1923, Albert Barnes was persuaded to exhibit seventy-five of his paintings at the Philadelphia Academy of Fine Arts. In the exhibition catalogue, Barnes admitted that his collection of art was a departure from the paintings that most critics had become familiar with. Barnes urged that the paintings should be studied for their modern artistic development. However, popular opinion prevailed. Most people felt that the artists were deranged and that the works were degenerate. Visitors declared that the imagery depicted in the works was not suitable. An opinion was formed that Dr. Barnes lacked artistic discrimination and this infuriated the collector. He would never forget the criticism since it challenged his judgment. As a result of this overwhelming disapproval and ridicule, Barnes became incensed. From that day on, he held a great repugnance for those who doubted his artistic judgment.

Albert Barnes admired people who belonged to the lower rungs of society and felt that their situation could be improved if they were given the chance to educate themselves. At the factory where Argyrol was produced, Barnes displayed paintings on the walls and encouraged discussion among workers. In 1922, Barnes established an educational foundation with a six million dollar endowment at the museum. At this time he gave 710 of his paintings to the organization. This institution, the Barnes Foundation, was intended to promote Dr. Barnes ideas about art. In 1925, the foundation building was formally opened. Barnes hung his works in a very peculiar manner. He interspersed African art with late Impressionist paintings and metal work. These were arranged according to a common contextual element which was found in groups of objects. At this time, although the foundation was a tax-exempt organization, the gallery was not open to the public and requests to visit the institution were strictly controlled by Mr. Barnes.

Initially, the foundation held an art program in conjunction with the University of Pennsylvania. Again, Albert Barnes became angered with the university's disdainful views towards his establishment and was wary that the school was trying to usurp his foundation. He quickly removed the University of Pennsylvania from the organization's by-laws and replaced it with Lincoln University (previously called the Ashmun Institute), one of the oldest predominantly African-American institutions. As a child, Barnes had attended African American Methodist revival meetings and had been deeply moved by their emotional vivacity. He had developed an admiration for African-Americans, their culture and art. He believed that the black population of America would show an appreciation for the art he had collected and he felt that the exposure would benefit them. He strongly wanted African-Americans to attain their full creative potential. As he once stated, "We have to acknowledge not only that our civilization has

done practically nothing to help the Negro create his art but that our unjust oppression has been powerless to prevent the black man from realizing in a rich measure the expressions of his own rare gift..."⁸

Although he could have selected any of the other nearby schools such as Temple or Bryn Mawr to control the foundation, he deemed them too closely connected with the Philadelphia Museum of Art. Moreover, his selection was meant to indicate "his contempt for the white, Main Line establishment"⁹ Hence, Barnes altered the by-laws and specifically wrote, "no trustee shall be a member of the faculty or Board of Trustees or Directors of the University of Pennsylvania, Temple University, Bryn Mawr, Haverford or Swarthmore Colleges, or Pennsylvania Academy of Fine Arts."¹⁰

Since Albert Barnes felt rejected by the contemporaries of the art-world, he cultivated a resentment towards those people who believed that they were art lovers (he preferred to call them "daydreamers.") He was a very fastidious individual who would not grant people entry into the collection if he did not like them. Furthermore, if he overheard visitors criticize the collection, he would send them out the door. Mr. Barnes was stalwart and was insistent that the foundation's charter be in the custodianship of an educational institution. Second, and most importantly, Barnes wanted to exercise full control over the organization not only in his lifetime but after his death as well. This was even reflected by the five member board of trustees, of whom only Dr. Barnes was permitted to make decisions. As stated in the provision, it was "[his] right, power and discretion for the reason that he has created said collection and best understands what may be necessary ...to perfect it and render it more adequate."¹¹ This control was to extend after his passing. It is interesting to note that, although Barnes refused to allow any paintings to

leave the premises, he made exceptions by loaning works to friends such as Glackens and Prendergast who supported his theories.

The foundation opened to the public in 1925. During Dr. Barnes' lifetime, it was open two days per week except when it was closed during the months of July, August and September. Visitors would be admitted if they presented admission cards which were given to them by the trustees. Further provisions stated that the foundation would uphold a democratic admissions policy, especially emphasizing the attendance of "the plain people." Banquets and dinners were forbidden and could not take place in any of the buildings on the property since he did not deem these to be educational nor democratic.

Barnes believed that his galleries should be visited by students and by members of society who lacked educational opportunities. When asked why he was so selective, Barnes remarked that, after years of observing the public in museums, he reached the conclusion that only the serious students should be admitted to the Barnes Foundation. For instance, he did not want visitors who would view the paintings with an untrained, ignorant visual approach. In 1927, Albert Barnes became involved in a dispute that potentially threatened the serene fabric of his neighborhood. Near the foundation, 126 homes were to be constructed. He resisted the plan and suggested that he would move the collection to New York, but his efforts were futile. At this point, he ordered the construction of a ten-foot high wall that would surround the foundation property.

When Barnes was killed in an accident in 1951, he left a will that contained several clauses. Firstly, it stipulated that paintings were to be left exactly as at the time of his death. He believed that removing any of the paintings would deprive the students of precious information. Only if a work was deteriorating and was no longer deemed valuable was it allowed to be

removed. None of the paintings could be sold or loaned. Next, the foundation's property was to be maintained properly in order to prevent any damage. Further, of the five trustees, four were to be nominated by the board of trustees of Lincoln University. Violette de Mazia, Barnes' companion, who helped him develop the curriculum, was to be appointed Director of Education. Lastly, Barnes insisted that the endowment be invested in low-risk assets: federal, state, municipal or railroad stock. Much commotion resulted from these stipulations and later placed the Barnes Foundation in the spotlight of legal and public scrutiny.

III. Legal Turmoil Resulting from the Indenture

After Dr. Barnes' death, the *Philadelphia Inquirer* filed a suit on behalf of Harold J. Wiegand, an editorial writer for the newspaper, in February of 1952. Wiegand asserted that the Barnes Foundation was not upholding its tax-exempt status and thus wanted the court to address this issue. He felt that the foundation should be mandated to embrace certain government regulations regarding public access to the galleries. The foundation replied to these claims by stating that the court was not permitted to change the organization's bylaws and that Wiegand had no say in the matter since he was not a member of the foundation's board of trustees. The Court of Montgomery County dismissed the suit. The *Philadelphia Inquirer* appealed before the Supreme Court of Pennsylvania. Again, the suit was dropped since the court believed that it could not interfere with the bylaws of a foundation unless specific illegal actions by the organization's trustees were involved.

In 1958, the issue was raised anew. At this time, the Deputy Attorney General, Lois G. Forer, was determined to supervise the operations of charities. The Attorney General took action in order for the foundation to retain its tax-exempt status. It was made aware that the Barnes Foundation was not open to the public. The state concluded that the galleries and the educational facilities were two separate components and that the galleries should be available to the public. However, nothing more ensued in this matter until a year later. In 1959, the court again was partial to the foundation. The judge, Alfred Taxis, resolved that the art gallery was an indispensable element of the educational institution and that the board of trustees was not required to admit the public.

The following year, in 1960, the deputy attorney general challenged the ruling and the case was appealed before the Supreme Court of Pennsylvania. On this occasion, the results were different. The court determined that the operations of the charitable foundation would be subject to further scrutiny. Judge Michael A. Musmanno declared that, if the Barnes Foundation was selective in its visitor admittance, then it was not a public institution. Hence, the foundation should not be granted tax-exempt status. In December of 1960, the foundation was required to put together a list of its assets, earnings, expenditures, an inventory of its art, a floor plan and a list of employees. Furthermore, the foundation was ordered to compile a list of individuals who requested to visit the gallery and one which indicated which individuals were granted admission. Judge Taxis also secured three art experts to evaluate the collection and to determine how many people the galleries could accommodate. The Barnes Foundation provided the court with some of this information but did not reveal any financial information nor did it provide an inventory of the collection.

An out-of-court settlement was reached. As a result, reasonable public access to the collection was required. The Barnes Foundation would open to the public two days a week except in the months of July and August. The museum was compelled to admit two hundred visitors on the days that it was open. Half would be admitted by appointment while the remainder would be admitted on a first-come basis. After the death of Mr. Barnes' wife Laura, the museum was be required to accept visitors one extra afternoon of the week. Furthermore, the court ruled that the foundation's public admission records would be open for inspection to make certain that the above terms were followed. The museum protested, yet change was inevitable. The gallery opened to the public on March 18, 1961.

However, since the matter was settled out of court, the state lost its claim to investigate the Barnes Foundation. In August 1966, the Barnes Foundation decided that it had to begin charging a two dollar entrance fee in order to compensate for rising expenses. The state alleged that this violated its earlier decision and hindered the admission fee, as it believed that this would have been against Dr. Barnes' wishes. After ten years of prosecution, a full-scale inquiry was undertaken. The five trustees were subjected to thorough questioning. Afterwards, the court interrogated art historians and curators who alleged that the foundation was not properly supervised. The state strove to remove four of the trustees (but not Mrs. Barnes) for incompetence. In March of 1963, the court rejected the action. It permitted the Barnes to charge a one dollar admission.

Many disputed whether the Barnes Foundation was in fact an educational institution or if it was meant to serve a broader number of people. Some distorted the information and posited that the foundation, from the very beginning, had been more of a museum than an educational institution. Many were unfamiliar with Dr. Barnes and his devotion to enlightening the unprivileged by exposing them to art. The courts also proved to be opinionated, regarding the foundation as merely a museum. Thus the Barnes Foundation continues to be entrenched in litigation.

In the mid-1980s, Franklin Williams was appointed director of the board. Williams was a distinguished individual who had served as an ambassador and at that time worked as a lawyer; he was devoted to Lincoln University. Franklin Williams had little knowledge of the treasures at the Barnes Foundation yet as time went on, he took the job seriously, always referring to Mr. Barnes' indenture during decision-making. In 1989, Williams announced that there was a vacant position in the board. A lawyer by the name of Richard Glanton revealed that he was interested

to fill it. Williams turned him down, however, since he believed that Glanton would utilize the position for political advancement. But a year later, Williams passed away and Richard Glanton was appointed Director of the Barnes Foundation.

To many, Richard Glanton was a nuisance and an obstinate individual. Immediately upon taking the directorship, he exclaimed, "the bylaws and strictures of the foundation's trust indenture are not carved in stone."¹² When petitioning to alter the terms of the indenture, Glanton and the other trustees stated the provisions have "over the years either been misconstrued or become impracticable and have caused or will soon cause the frustration of the intent of the foundation as expressed in the indenture and make it fail of its essential purpose."¹³

In 1990, Richard Glanton proposed an art-advisory committee. This group included various museum professionals and other distinguished individuals such as Walter Annenberg (one of Dr. Barnes' enemies). However, meetings were infrequent and the idea was finally abandoned when Glanton suggested selling artwork to raise money. Glanton proposed to sell fifteen million dollars worth of paintings and this recommendation caused a rupture, provoking further scrutiny and criticism.

When talks began about renovating the Barnes Foundation's building, trustees had been deliberating how the money to cover the costs of improvement could be raised. Richard Glanton proposed to sell fifteen million dollars worth of paintings and also filed a petition to break Dr. Barnes' indenture. At first, they deliberated selling fifteen paintings but reconsidered the decision in view of the great agitation that this might cause. Richard Feigen, a member of the Arts Advisory Committee, emphasized that as a general rule, objects can only be deaccessioned if they are to be replaced by other works. Feigen was shortly relieved of his duties. However, by this time, the Barnes Foundation was placed in the limelight by the *New York Times* and the

Philadelphia Inquirer. Glanton was compelled to drop his petition. He modified his plan and wanted the Barnes Foundation to rent out its paintings.

In July of 1992, Judge Louis D. Stefan ruled that the trustees of the Barnes Foundation could prepare a traveling exhibit in order to raise funds to update and repair the mechanical and security system in the galleries and install climate-control and sprinklers. The judge refused to alter the will but called for a "one-time deviation" and ordered that the paintings be returned to their original places after the tour was completed. According to the law, this action is known as administrative scheme and it is very similar to *cy-pres* which occurs when the court approves an alternative plan that essentially follows the donor's intent but accommodates necessary variations. The court will consider the option of deviation where adherence to the administrative terms of trust would disrupt the specific purpose of the charitable trust.¹⁴ Although the tour would disobey the indenture, Judge Stefan felt that it addressed the by-law which insisted that the foundation's property be kept in first-class repair. Some students of the Barnes Foundation's educational program suggested that the institution had deliberately neglected some of its artwork in order to sever Dr. Barnes' indenture. The court took these allegations into consideration and required that the foundation supply documentation proving that the paintings could travel without being subjected to further harm.

In 1993, paintings traveled to Washington, D.C., Paris and Tokyo. Interestingly, the last venue for the show was the Philadelphia Museum of Art. One might wonder how Mr. Barnes would have reacted to this decision. More than likely, Barnes would never had let his paintings be shown in an institution towards which he held such a strong grudge. The tour generated seventeen million dollars. The court had stipulated that this revenue was to be spent on renovations and building improvements. Hence, these funds could not be used to supplement the

inadequate operating budget. The building's electrical system had not been maintained since the 1920s, temperature had not been monitored and the building showed other signs of neglect. For instance, a steam explosion in the mid-1980s had resulted in water damage that nearly ruined several paintings.

At this time, the Violette de Mazia trust sued the foundation, alleging that the traveling exhibition was a violation of the Barnes Foundation charter. Violette de Mazia, who played an integral part in the organization's operations, had established a trust in her will. This trust was founded in order to sustain the educational program. The De Mazia Foundation, which has been valued at approximately nine million dollars, judged that the touring exhibition would adversely affect the established educational program. Many students who deemed the paintings too fragile for travel joined the de Mazia trust's opposition. Experts from the National Endowment for the Arts, however, testified that the works would not be damaged if suitably crated. Mr. Annenberg, who was on the Art Advisory panel, remarked: "the students [enrolled in the Barnesian educational program who opposed the traveling show] are totally unconstructive..they're just a bunch of complainers who act as if they're important figures in the world. They're nothing. The tour is the best way to raise funds to bring the Barnes into the 21st century."¹⁵ Richard Glanton likewise remarked that the students have no right to comment and stated "You [students] have no right to ask...There isn't a single one among you who has ...given a nickel to Lincoln University."¹⁶

However, it has been reported that a couple of the paintings did suffer damage. For instance, the safety of *La Danse*, a painting commissioned from Matisse specifically for the foundation building was compromised. According to art conservator Paul R. Himmelstein, who examined the painting after the tour, its canvas became slack and all three panels demonstrated

stretcher creases running horizontally across the panels. It had been argued that there was no need for such a large mural (which measured thirty feet in height) to travel, yet the National Gallery insisted that it would be an essential constituent of the exhibition.

As a result of the traveling show, more people came to visit the Barnes Foundation once all the paintings were returned to their original locations. Soon neighbors began complaining about increased visitor numbers, which created traffic problems and turned their neighborhood into a tourist hotspot. These concerned citizens, along with town commissioners, attempted to compel the foundation to adhere to its legal status as an educational institution. They asserted that the foundation was transforming itself from an educational gallery into a museum. The situation became very heated and the vice-president of the foundation, Richard H. Glanton, brought a civil rights suit (citing Title VII of the Federal Civil Rights Act) against the neighbors and commissioners for racial bias (Glanton is African-American). The accused retaliated by filing a defamation action against Glanton and three of the Barnes Foundation's trustees. It has been suspected that the Barnes Foundation, namely Glanton, pursued the charges in order to achieve a favorable court decision towards zoning regulations. By the time this ordeal quieted down, three of the trustees had resigned.

The Barnes Foundation later filed a petition which sought to alter certain conditions of the trust indenture. The foundation requested to expand its investment options since the stipulated investments proved to be too stringent and had not produced sufficient income. The trustees stated that, if the endowment had been invested effectively, it could have grown to thirty million dollars. The courts did not express any opposition to the petition and found that the investment restrictions were indeed impractical and the trustees were granted their request. It also asked for permission to host fundraising activities. It is worth mentioning that, although this

was strictly prohibited, Richard Glanton had hosted social activities in the galleries for schools, social organizations and his children. Moreover, the Barnes Foundation strove to modify its hours of operation and the cost of admission (which was still one dollar). As Richard Glanton said, "the most important thing is that we're going to open the Barnes Foundation up to the public."¹⁷ He also remarked, "I see no reason why we shouldn't have the broadest public access possible."¹⁸ It seems that Glanton was hinting at a museum-like operation. But would not such a maneuver radically change the nature of the Barnes? One must note that, of the five trustees at the time, none had any background in art history or knowledge of museum management. Hence, these trustees intended to raise funds by violating the stipulations of Dr. Barnes' indenture. Both the Violette de Mazia trust and the students of the foundation vehemently argue that the Barnes should continue to be what Dr. Barnes had so faithfully created: an educational foundation rather than a museum.

The Montgomery County Orphan's Court did not permit the trustees to alter the indenture in order to permit fundraising activities within the foundation's gallery since it deemed these gatherings as special privilege events that were contradictory to Dr. Barnes democratic ideals. The Barnes Foundation, however, was not fully satisfied since it anticipated that the court would approve fundraisers. The matter was scrutinized very carefully in accordance with the bylaws of the foundation: "at no time after the death of said Donor, shall there be held in any building or buildings any society functions commonly designated receptions, tea parties, dinners, banquets, dances, musicales or similar affairs..." Judge Ott asserted that fundraisers were considered "similar affairs" and hence they would not be allowed. However, the Pennsylvania Supreme Court Judge John T.J. Kelly reversed this decision. The trustees petitioned that fundraising activities did not fall under the category of societal functions. Judge John T.J. Kelly, representing

the orphan's court, applied a "rule of construction," a tactic utilized when solid legal basis for a decision is lacking. Judge Kelly determined:

In interpreting the language of the [indenture] paragraph, we are aided in our work by the construction principle known as *ejusdem generis*, which provides that when words of general impact are preceded by, and connected with, words of narrower impact, the interpretation of the words of general meaning will be confined to the species of things more specifically described.¹⁹

Thus, he concluded that since the indenture specifically made reference to "receptions, tea parties, dinners, banquets, dances and musicales," fundraisers were not included in this specified grouping of prohibited societal activities. After subsequent litigation, the Court of Common Pleas of Montgomery County permitted the Barnes Foundation to host fundraising activities on the premises.

In 1995, Judge Stanley R. Ott of the Montgomery County Orphans Court forbade Richard Glanton's request to open the galleries a total of six days per week and to raise admission to ten dollars. Judge Ott deemed that these objectives went "far beyond" Mr. Barnes' intent. Dissatisfied, Glanton appealed the judgment. Glanton had been planning to construct a parking lot (on part of the arboretum that Barnes had promised to maintain when he initially bought the property).

As a result of Judge Ott's decision, the Barnes Foundation was allowed to raise admission to five dollars; the museum could be open an additional day; and the foundation was permitted to broaden their investments. The extra day was to accommodate the competing interests of the public gallery and the educational program. The five dollar fee was assigned since the court felt that a ten dollar fee was too steep. Although Dr. Barnes had stipulated free

access, the court realized that an admission fee was necessary in order to aid operating costs. The court believed that five dollars was a suitable balance between generating necessary funds and keeping the fee reasonable for the public.

After this judgment, the Barnes Foundation trustees filed a "second amended petition" which once again addressed the terms of the indenture. Glanton desired to have the gallery open every day of the week except for Monday and sought to extend the gallery's hours of operation on those given days. Mondays would be designated for the art education classes as would the time before and after admission hours during the remainder of the week. The Attorney General's Office indicated that it would approve this measure but met much resistance from the Violette de Mazia Foundation, which argued that this would negatively impact the educational curriculum. The Barnes Foundation trustees adamantly believed that increasing public access fell within the terms of the indenture since they considered viewing the collection an educational process in itself. The terms of the petition were not approved. To this day, the foundation is open on Fridays, Saturdays and Sundays and in the summer months of July and August (when it was to be closed to the public according to the indenture) the court allowed access on Wednesdays, Thursdays and Fridays.

By this time, the foundation felt that the court was placing too many limits on admission since even though hours of operation and entrance fee were increased, they were still restricted. The court responded by stating that the foundation had to demonstrate that such adjustments were absolutely necessary. Upon a closer examination, the court deemed that there was no need to have the museum open six days a week nor to raise admission to ten dollars, as requested by the Barnes trustees. The court viewed that the institution did not need additional funds since it had accumulated over five million dollars from the traveling exhibition of its paintings. As a

result of increased attendance, the museum was not able to claim itself as a private educational institution. Judge Stanley R. Ott ruled that any additional hours of operation would transform the foundation into a full-time museum. The Superior Court upheld the decision, stating that the trustees did not provide ample evidence as to why the foundation should be open six days per week or why admission fees should be increased.

Zoning issues emerged in 1996. The Lower Merion Zoning Hearing Board declared that increased access would violate local zoning restrictions. The board observed that the "principal use on the property is the operation of an art museum open to the general public, and not that of a private educational institution."²⁰ The foundation retorted that it had not become an art museum and that all visits were educational. The board responded that providing an educational experience does not qualify the foundation as an educational institution. Hence at this point, opinion was expressed that the Barnes Foundation was a gallery that offered a cultural value yet it did not recognize the official intent of the Barnes as an educational institution.

In 1998, the Barnes Foundation attempted to improve its image. It was well known that the board schemed to oust Richard Glanton. In 1998, he announced his resignation citing a conflict of interest. After a management improvement, the foundation still faced financial problems. In 1999, the Barnes Foundation had depleted its ten million dollar endowment on renovations, salaries and legal expenses. Additionally, they also paid fees imposed by Glanton's own legal firm. Fortunately, in 2000, the Violette de Mazia Trust granted the institution \$760,000 even though this organization had disassociated itself from the Barnes foundation in 1996. However, two years later, the Barnes Foundation funds were dwindling. Problems arose when the De Mazia Trust charged the Barnes trustees with violating their obligations to the struggling organization. The De Mazia Trust's legal standing was upheld in the court and

allowed the trust some room for investigating the Barnes' financial gifts. The trust accused the Barnes trustees of redirecting funds to Lincoln University that should have been given to the foundation. After some bickering, the Violette de Mazia Trust and the Barnes Foundation trustees reconciled.

According to Kimberly Camp, current director and chief executive, the Barnes must raise fifteen million dollars to remain operational. Yet, even this amount will not ensure future stability. Camp is attempting to create a "Barnes Society," a nonprofit support board in order to promote a venue for fundraising. Camp also hired a director of development whose task it is to actively seek grants and developing fundraising programs. In a recent interview, Camp clearly stated, "the Barnes is NOT a collection - it is a school for the advancement of education and the appreciation of fine art and horticulture."²¹ It is important to note that the foundation offers a three year program in horticulture and a two year program for art appreciation.

In the summer of 2000, the Barnes Foundation began a fifteen million dollar emergency fundraiser since the institution feared that its ten million dollar endowment was vanishing. Annually, the Barnes raises \$1.7 million, mostly from admission sales and licensing sales. The foundation desperately needs to raise funds because it operates on a two and a half million dollar budget each year. The evaporating endowment does not allow the foundation to keep up with costs or to carry out necessary conservation. That same year it was announced that Joseph Rishel, a curator from the Philadelphia Museum of Art, would chair a new curatorial advisory committee to direct the collections-assessment project. This is especially critical since most of the inventories are incomplete and only sparse research of the artwork has been done.

In February of 2001, the Barnes Foundation received grants from the J. Paul Getty Trust and the Pew Charitable Trusts. The director of the Culture Program for the Pew Charitable Trusts

remarked that the Barnes Foundation was “an extraordinary and unique Philadelphia treasure” which had to be “protected and preserved”²² Four months later, the Barnes received two \$500,000 grants from the Andrew W. Mellon Foundation and the Henry Luce Foundation.

In April 2001, the foundation petitioned for another traveling exhibition, this time focusing on works in storage. The Barnes argued that the benefactor’s will does not apply to works which are being archived. However, many questions were and still are raised as to whether these works fall under the stipulations of the donor’s intent. The foundation asserts that keeping the pieces in storage runs counter to the mission of the Barnes Foundation since the donor had wanted all of his collection to be studied and appreciated. The petition filed by the foundation states: “Extending the indenture’s ‘no movement’ and ‘no loan’ provisions to reach all the way to these non-gallery paintings is at odds with Dr. Barnes’ treatment of them...and contradicts Dr. Barnes’ intent that all his collected works of art be used to promote art education and appreciation.”²³

Recently, the Barnes Foundation has begun to debate whether it should move the foundation so that it may become more accessible. It is considering to move the foundation near the Benjamin Franklin Parkway in Philadelphia so that it will be closer to other museums where it can attract more visitors. It is quite evident that Mr. Barnes would have been outraged at this stunt towards attaining cultural tourism. Although financially it seems impossible to accomplish this move, it has raised concerns and criticism. Again, the Barnes Foundation may be monitored. It will be only a matter of time until the foundation discloses whether it will be able to stay afloat in times of dire financial crisis.

IV. The Role of the Charitable Trust and Art Law

To understand the causes of the turmoil at the Barnes Foundation, it is necessary to explicate various legal issues and terms. Firstly, one must comprehend the basic mission of a museum. Although the Barnes Foundation had not been established as such, it is vital to apply the terminology since the courts have deemed the gallery a museum. *Art Law* elaborates and explains the primary roles of a museum. The museum serves an educational purpose and is expected to enlighten the public. Lerner and Bresler emphasize that "at its core, the museum is an educational organization."²⁴ This is precisely what Dr. Barnes underscored when he created the foundation. The trust which is responsible for the institution must enrich its visitors. Thus, the museum's principal obligation must be to serve the public.

Secondly, in order to gain insight into the fundamental dilemmas at the Barnes Foundation, one must comprehend the nature of a trust and the extent of trustee responsibility. According to *Art Law*, a trust is "a fiduciary relationship in which a party known as a trustee holds property that must be administered for the benefit of others [beneficiaries]." In a charitable trust, the public is regarded as the beneficiary.²⁵ A trust is created by a donor who is also referred to as a settlor. The trust is enforceable by the attorney general of the state in which the charitable trust operates. The trust is expected to safeguard the museum's possessions and to act with allegiance and responsibility. Hence, it is vested with a "duty of stewardship."

Years ago, trustees were primarily responsible for providing necessary funds for institutional operation. Today, their roles have expanded to include new responsibilities and commitments. As *Art Law* emphasizes, the museum's possessions not only include its collections, but its trust funds as well.²⁶

In *Museum Governance*, Marie Malaro advises that each board member demonstrate personal attention to the mission and practice caution. Likewise, she states that "the prudent nonprofit trustee always bears in mind the importance of being accountable...and the importance of always weighing long-term effects on mission."²⁷ The foundation that the trust oversees belongs to the public. Hence, the organization is vulnerable to public scrutiny. For instance, when the Barnes trustees determined to raise admission fees in 1966, the state opposed the action. A full-scale investigation took place and each of the five trustees were interrogated. Public suspicion was raised and the aptitude of the foundation's administration proved to be a key issue. Although unsuccessful, the state did attempt to remove four of the trustees for incompetence, demonstrating that the state can intervene at its discretion.

Further, at any given time, the public can request to examine the foundation's finances. For instance, in 1960, the court resolved to analyze the Barnes Foundation's operations. The institution's admittance policy became a principal issue since the foundation's tax-exempt status was in jeopardy. Foundations (the trustees) are accountable to federal tax laws and state laws. Federal tax laws are intended to provide guidelines regarding organizational activities which are meant to comply with tax exemption laws. State laws focus more on internal operational issues and can execute decisions concerning amendments. Charitable foundations must be open to the public in order to claim tax exemption. In order to examine the case further, the court mandated that the Barnes Foundation had to provide a list of its assets, earnings and expenditures. The court's intervention and injunction illustrate that a trust has increased exposure to liability since it is based on a fiduciary standard. Trusts often fail to understand the nature of a donor restriction. This often leads to unnecessary and complicated liabilities.²⁸

The duty of care requires regular board attendance and the demonstration of independent judgment. The most significant responsibility includes exercising reasonable care in decision-making. Mistakes are sometimes made when trustees act too confidently. The business management rule, applied to trustee activities specifically, takes risky maneuvers into consideration. This principle demands a reasonable duty of care considering the circumstances. Also, it requires a certain level of professionalism and competency. For instance, when the Barnes Foundation proceeded to take its neighbors to court citing racial bias, many deemed that the decision was nothing more than a frivolous attempt to alter the foundation's zoning regulations. As a result of the bitter ordeal, the neighbors requested reimbursement for attorney fees which resulted from the litigation. Although denied the request, the neighbors appealed the decision and shortly after, five of the neighbors were entitled to recover the fees. The Barnes Foundation's judgment to pursue this lawsuit resulted in further financial devastation. Thus, the foundation became not only responsible for its legal fees, but also the attorney fees of five of the defendants. Perhaps if the determination to file suit had been examined more rationally, the foundation could have protected itself from further inquiry, negative media coverage and financial liability.

The duty of care is one that cannot be trivialized. When the Barnes Foundation trustees sought to sell fifteen million dollars worth of paintings, the art world became aghast. This decision was prompted by the fact that the foundation found itself in an extremely grave financial state. However, every trustee of an art institution must fully comprehend that works cannot be sold in order to secure needed funds. The Barnes Foundation became the focus of scrutiny and it incited public disapproval towards the foundation's directorship and decision-making. The Barnes Foundation's judgement to dispose of several of its priceless works

generated significant doubt in regard to trustee competency. The above situation serves to emphasize that the duty of care cannot be taken lightly.

The duty of loyalty obligates the trustees to offer exclusive allegiance to their organization. Thus, trustees should not take advantage of their position for personal gains. Although not fully substantiated, many believed that Richard Glanton was manipulating his position at the Barnes Foundation in order to elevate his legal career. Secondly, the public sensed that Glanton and perhaps other Barnes Foundation trustees strove to bring more attention to Lincoln University, since they were employed by the university. According to the duty of loyalty, the charitable institution must be the primary focus while other pursuits and interests must take a secondary position where they cannot impede trustee allegiance to the foundation.

The last obligation, the duty of obedience, requires the board member to make certain that the organization stays faithful to its purpose. The trustee must therefore adhere to the foundation's charter and other documents relevant to the institution's purpose. Each member must be familiar with the by-laws and the articles of incorporation. These must not be misconstrued in order to achieve desired ends. When Richard Glanton expressed that the Barnes Foundation should provide the broadest access possible to the gallery, Glanton threatened the very core of the institution's mission. In fact, the Montgomery County Orphans Court resolved that Glanton's requests were excessive since they went far beyond Albert Barnes' intention. In fact, the Barnes Foundation charter clearly states its mission (to promote the education of the arts) and lists other provisions. If the basic responsibilities are not followed, then a suit may be filed against the board members charging them with breach of duty to the organization. This is consequently referred to as a derivative action and results in litigation. The action is deemed to be received from an injury within the organization. In such a case, the Attorney General, other

trustees or members of the organizations may sue the board member. Thus, in order to avoid complications, the trustee must follow the precept of obedience as it pertains to the legal aspect of their responsibility.

The guidelines devised by the American Association of Museums require that the trustees understand and support the institution's mission, the collections and programs. Additionally, the board of trustees must see to it that the foundation's physical, human, and financial resources are protected, maintained, and developed in support of the museum's mission and public trust responsibilities.²⁹ The trustee, as previously mentioned, must exercise care, loyalty and obedience.

According to Alceste Pappas in *Reengineering Your Nonprofit Organization*, calamity can be prevented by establishing certain guidelines. These include: foregoing a "corrupting sense of power...[to] embrace a moral sensitivity of service," drafting a conflict-of-interest policy and to remain faithful to the foundation's mission.³⁰ When Judge Louis Stefan approved the traveling show in 1992, he observed that the trustees' actions "give rise to the suspicion that [their] intentions...might be somewhat more ambitious than what their present request has indicated."³¹ Further, one conclusion of this court action stated: "maintenance of the Foundation facilities and protection of the collection are absolute prerequisites to the achievement of the purpose of the Trust, and are essentially the responsibility of the Trustees."³²

Dr. Barnes decided that Lincoln University should be given the opportunity to carry out the responsibility of maintaining the foundation since black institutions were not given the chance to embrace art. He felt that Lincoln University could elevate itself and gain admittance into academic affiliations. However, did he realize what problems could result from a board of trustees which had so little knowledge of museum practice or art history? The responsibility for

carrying out trusteeship requires certain familiarities: museum administration, recognizing the institution's mission and the importance of protecting the collections.

Trustees are expected to periodically review their actions and foundation documents to make certain that decisions comply to the foundation's mission. As noted previously, trustees must embrace their foundation's charter. In the case of the Barnes Foundation, Dr. Barnes drafted both a charter and by-laws that dictated certain restrictions to future government. The by-laws are an additional document, usually consisting of explicit stipulations which serve as a means of foundation management. By-laws are more detailed since they include specific information such as selection of trustees and specific tasks to be performed. Unlike the articles of incorporation, a foundation's by-laws are not required to be submitted in order to be kept in state files. Consequently, a foundation's by-laws can be modified without much resistance.

When a foundation feels that certain restrictions are no longer feasible, it can file a petition towards a *cy pres* action. Literally, *cy près comme possible* is interpreted "as near as can be." *Cy pres* has its origins in Europe in the 13th century when it was connected with "mortmain," or dead hand statutes that pronounced charitable bequests valid only if a will was executed a certain number of days before the testator's death. By the mid-1600s, *cy pres* became a common practice. It was utilized when a donor's order was illegal or impossible. In the 19th century, American courts were hesitant to apply *cy pres* since they deemed that estates should be preserved. However, this attitude began to change in the 20th century when courts intervened to free the "dead hand". When the rationale is presented in court, it is necessary for the museum to state that the donor's request has been impossible to attain. For instance, when the Barnes Foundation trustees petitioned to broaden their investment options, they argued that, due to a quickly changing economy, it would have been difficult for a donor to foresee how his funds

would have to be inverted in the future. When *cy pres* is opted for, the petitioners must devise an alternative plan that essentially follows the donor's intent but accommodates necessary variations. Hence, the court will examine the issue and may consider an option in accordance with the general intent of the bequest. As Malaro explains, *cy pres* was intended specifically for charitable trusts as a way to hinder the "dead hand" from creating a practical conflict and impeding the future decisions of trustees.³³ Mr. Barnes bequeathed an institution which was to operate under certain restrictions and thus created a prime example of the dead hand. The dead hand is legally binding and controls trustee judgment.

Before *cy pres* is granted, the court examines whether failure to carry out the intent is a result of initial shortcoming or subsequent oversight. *Cy pres* may be applied in the first case—if the stipulations in a will are faulty and if it is impossible to fulfill the donor's wishes. It is often expensive and *cy-pres* may not be applied if certain responsibilities have not been carried out, for reason of trustee negligence. Malaro further explains that, if the donor clearly showed a charitable purpose, the court "may approve an alternate purpose that appears to be in accord with what the settlor would have wanted had he or she had knowledge of the present day circumstances."³⁴ Courts are usually inclined to uphold donor intent as long as the bequest is modest and does not entail many restrictions. In the case of the Barnes Foundation, *cy pres* has been applied in several instances. For example, when the foundation sought to alter certain terms of the indenture, *cy pres* was exercised in order to expand the institution's investment options. *Cy pres* further enabled the Barnes Foundation to increase its admission price and to boost visitor admission by opening the gallery several additional days weekly and during the months of July and August (which had been forbidden per Mr. Barnes' stipulations).

Trustees must be prudent, however, when petitioning for *cy pres*. When the trust asked to raise admission to ten dollars and to open the galleries six days a week, the court felt that the request was excessive. The Barnes Foundation was allowed to raise admission to five dollars and the galleries were to be opened a total of three days per week. Hence, prior to deliberating the issue in front of a court, trustees must be fully aware of the extent to which an indenture may be altered. Dr. Barnes specifically stated that he wanted the collection to be enjoyed by the working class. Understandably, today the museum can no longer operate if admittance is free; however, an admission fee of ten dollars would be too steep for the classes that the donor had intended to enrich. Secondly, opening the gallery six days a week would transform the foundation from an educational institution into a full-scale museum. Both of these requests proved to be unreasonable in regard to Dr. Barnes' indenture. The trustees, nevertheless argued that they considered public visitation to the gallery an educational experience, the purpose of the foundation. As a trustee of the foundation, each individual should have been somewhat more knowledgeable about Dr. Barnes' ideals and his unique teaching program at the institution. The board was unhappy with the Montgomery Court's decision and tried, without result, to convince the court that the restrictions were still too stringent. Referring to the doctrine of *cy pres*, the court deemed that such adjustments were not absolutely essential for the foundation's operation. Thus, trustees should be cautious, utilize their influence wisely and fully deliberate how an indenture can be altered in order to satisfy current needs without disregarding a foundation's mission.

The law usually disapproves permanent restrictions on property. As years go by, some gifts tend to lose the rationale of their intended purpose. Hence, by altering a gift via the application of *cy pres*, the bequest is revived in order to best serve the public. Often, *cy pres* is

used in order to avoid the failure of a charitable gift. In addition to *cy pres*, courts sometimes apply a rule of deviation. For instance, the court opted for this measure when the Barnes sought to have a traveling show of the work, since this one be a one-time occurrence. Deviation occurs when the court permits a trustee of a charitable trust to digress from a term of the trust if the court has reason to believe that compliance is unrealizable (or illegal) or if unbeknown to the settlor compliance would prove counterproductive to the purpose of the trust.³⁵ Deviation ensures the proper management of a charitable gift while *cy pres* is practiced in order to avoid the potential shortcomings of a charitable gift. Thus, *cy pres* is used to change the objectives of a charitable trust while deviation alters the means in which the intent of a charitable gift are realized.

With an onslaught of legal turmoil, the Barnes Foundation laid itself open to prolonged scrutiny. It became vulnerable and its credibility was jeopardized. Many questioned the board and its actions. Following an organizational overhaul, it appears that the foundation is attempting to rectify its previous oversights produced by management that had neglected to carry out its responsibilities. The current director, Kimberly Camp, remains loyal to the mission of the Barnes Foundation, asserting that first and foremost, the institution serves an educational purpose with a focus on the art education and horticulture program. It is unfortunate that previous mistakes continue to haunt the foundation, reminding the institution of financial tolls and public disappointment which have been garnered in the 1990s. The case of Barnes Foundation illustrates the importance of board responsibility in managing the trust. Trustee oversight--mainly shortcomings in the decision making process and failure to maintain commitment to a foundation's mission can result in damaging and long lasting consequences.

V. Ethical Analysis

Simply stated, the Barnes Foundation was not intended as a museum. Its collection was never meant to be gawked at by hundreds of visitors. The foundation was established as an educational institution to teach the Barnes method of art appreciation. During his lifetime, individuals were able to see the masterpieces only if they were a student at the foundation or if they received written approval from Doctor Barnes. According to Nick Tinari, a former student, "... Mr. Barnes had a very specific educational philosophy in mind for every painting, every antique, every drawing and piece of furniture in that gallery."³⁶ Also, Albert Barnes published several books in which he explained his philosophy. He strongly believed that only those sincere about learning should see the collection. Indeed, Albert Barnes was quite stringent. Article XI of the by-laws states that the first five articles are "unamendable and shall never be amended in any manner whatsoever."³⁷

When a person donates a gift, the motive is usually to seek a way of remembrance. In the case of Albert Coombs Barnes, he wanted his educational discipline to benefit the lower classes for posterity. Unfortunately, his intent was curtailed by his own will. Public opinion deems that the "dead hand" is extremely inflexible and prohibits the foundation from operating in a manner outlined in Dr. Barnes' wish. Indeed, the dead hand governs trustee actions. Nevertheless, trustees must be aware that, if they follow a moral code then the public, and specifically the State Attorney General, will recognize that the trustees are acting thoughtfully. If proper ethical behavior, however, does not achieve the desired ends, then trustees can attempt to alter the indenture by means of *cy pres*, as explained previously. In such a case, the court will be inclined

to grant the request without impairing a foundation's credibility since the trustees had conformed to the expected legal and ethical standards.

Foundations have both a legal and ethical responsibility. Trustees are accountable for managing the institution. The trustees, whether they fully comprehend all issues or not, safeguard the collections acting as stewards for the public.³⁸ The public is the beneficiary of a charitable trust, but trustees occasionally neglect this simple truth. A trustee's responsibilities are not to be taken lightly nor forsaken when problems arise. The board must fully deliberate decisions and make certain that their objectives are permissible. According to one art critic who places blame on the board members: "Are they [trustees] really rescuing it for the future, or does 'saving' the Barnes now mean altering it beyond recognition?"³⁹ As emphasized by David Carr, every decision involves an interpretation of trust. He states "venal compromises of mission are inevitably bad for the museum's [or foundation's] sense of integrity and purpose, and equally damaging to public trust."⁴⁰ A successful museum or foundation achieves public confidence by adhering to mission, ethics, supervising itself and assessing decision-making and overall performance. Carr further notes that it is important to distinguish between management and fundraising and that politics and economics can hold institutions captive and be detrimental toward fulfilling its mission.

Institutions in the nonprofit sector such as the Barnes Foundation are susceptible to public scrutiny. Currently, as Marie Malaro observes, the sector is fragile since its operation "depends heavily on the confidence it can inspire in its integrity."⁴¹ A foundation must do what it can to attain and uphold public confidence which has recently been declining. A foundation's reputation depends on its governance that rests with the board of trustees. Citing the case of the Barnes Foundation, Marie Malaro notes, in *Museum Governance: Mission, Ethics, Policy* that

many trustees, unfortunately, have little understanding of essential nonprofit issues, especially issues concerning their organization.

According to Marie Malaro, the ethical code "sets forth conduct that a profession considers essential in order to uphold the integrity of a profession. Codes of ethics are based on commitments to public service and personal accountability."⁴² Ethics and the legal system are often interdependent. However, unlike the law, ethics cannot always be enforced. When implemented, codes of ethics, nevertheless, can set standards where the law becomes ambiguous. This ethical code, as Malaro explains, can advocate that governing boards comply with legal standards and foster management which meets public credence.⁴³ Compliance with ethical standards is taken into consideration when litigation takes place. If the professional code is followed, then the court will mostly likely dismiss accusations of improper governance. As Malaro emphasizes, trustees may act too hastily during times of financial crisis. For example, the Barnes Foundation trustees acted heedlessly when they attempted to deaccession several paintings in order to obtain desperately needed funds.

In *Museum Governance: Mission, Ethics, Policy*, Marie Malaro comments that a foundation's board of trustees can easily misuse authority. She quotes a judge, regarding this issue: "A trustee is held to something stricter...Not honestly alone, but the punctilio of an honor the most sensitive, is the standard of behavior."⁴⁴ Many states are beginning to supervise foundations by paying increased attention to trustee conduct. Courts are becoming more stringent when examining trustee activities since they expect trustees to follow a code of ethics. It appears that in certain areas legal and ethical codes overlap. For instance, the code of ethics emphasizes due diligence and refraining from any decision making which would demonstrate an abuse of power. Hence, how does the code distinguish ethical behavior? Ethics is defined as "the rules or

standards governing the conduct of the members of a profession," specifically addressing "a principle of right or good conduct."⁴⁵

The International Council of Museums (ICOM) Code of Professional Ethics, Section 5.1 best summarizes a crucial issue which the Barnes trustees have disregarded. The statement reads as follows:

The museum professional must understand two guiding principles: first, that museums are the object of a public trust whose value to the community is in direct proportion to the quality of service rendered; and, secondly, that intellectual ability and professional knowledge are not, in themselves, sufficient, but must be inspired by a high standard of ethical conduct.⁴⁶

Trustees should carry out their responsibilities honestly and always conduct their tasks in good faith. The law does not anticipate that trustee judgments will always be right but the very least that is expected from a trustee is faithful attention to policy and ethical conduct. Decisions must be reviewed prudently and attention to the mission must always be a primary objective.

In order to avoid liability, certain standards and procedures must be implemented. A trustee proposing a new idea must supply adequate information to the remainder of the board and the issue must be deliberated and voted upon. This should be the process guiding decision-making. In an ideal situation, this method should prevent any potential dilemmas. However, the case of the Barnes Foundation proves to be more complicated. It is not certain what steps were taken to ensure ethical responsibility. However, it is obvious that the trustees had very limited museum experience. Some appear to have lacked knowledge of art history all together, and were unfamiliar with Dr. Barnes' ideology. The decision making process may have been completely distorted from the very beginning. If trustees were oblivious to certain standards and the mission

of the foundation, they may have thought their decisions were appropriate. After several series of litigation, the trustees should have realized that perhaps it was not the indenture that seemed to be the overriding problem, but their inability to make sound decisions.

Was the attempt to sell some of the paintings ethical? According to art critic Hilton Kramer, "...the prospect of selling pictures out of the Barnes collection... [is] a tragedy for the entire country."⁴⁷ The issue generated much controversy and incensed the museum community. Tom L. Freudenheim, a member of the Barnes Foundation's art advisory committee stated: "The Barnes is a national treasure of great significance, and I think it's a problem to start messing around with it."⁴⁸ Freudenheim, who also serves as an assistant secretary of museums at the Smithsonian Institution, states that the Barnes Foundation is "a rare example of a first-rate collection that was put together by one person." He asserts that the collection must be kept intact in order to comprehend the history of collecting and a philanthropist's aesthetic judgement.⁴⁹

As stated in AAM and ICOM statutes, deaccessioning should be done only for the acquisition of new objects. Deaccessioning items in order to raise operating funds is contradictory to a museum's mission, since an institution is expected to safeguard collections for public benefit. Hence, not only would the action be restricted by ethical standards, it is also clearly illegal in reference to Dr. Barnes' indenture that specifically prohibits the sale of any of the collections. Unfortunately, the law may not enforce professional ethics standards. This becomes more complicated, since museum decisions can be superintended by the state Attorney General's office which keeps supervision over public charities. If the Attorney General chooses to participate in the decision, then the state assumes responsibility for assuring that the art institution's actions are concordant with the interest of the public, thus addressing the legal aspect of the issue.

Richard Glanton, the previous Director of the Barnes Foundation, attempted to overturn Dr. Barnes' indenture. In Glanton's opinion, the will was not set in stone and Glanton pursued a petition which would break the indenture. One of the fundamental responsibilities expected from a trustee is to stay true to the mission, the very purpose of the foundation. The Violette de Mazia Trust and the students enrolled in the art appreciation program have long recognized this and have spoken out against the board of directors. The ICOM Code of Ethics states that the museum professional should have appropriate training in order to properly execute their duty. Unfortunately, Dr. Barnes did not demonstrate any such foresight when drafting stipulations concerning the appointment of Lincoln University members. Barnes held a grudge toward museum professionals, and this sentiment hampered the foundation in the 1990s.

If the Barnes Foundation trustees approached their duties with expected credentials, perhaps they would have demonstrated more attention to the ethical standard emphasized by International Council of Museums. Section 7.1 of the ICOM Code of Professional Ethics again buttresses the view that "members of the museum profession should observe accepted standards and laws, uphold the dignity and honor of their profession, and accept its self-imposed disciplines."⁵⁰ Similarly, the American Association of Museum's Code of Ethics stresses that museum professionals must understand a museum's mission, and that "the museum's collections and programs and its physical, human, and financial resources are protected, maintained, and developed in support of the museum's mission."⁵¹

If the trustees of the Barnes Foundation had adhered to ethical standards in the 1980s and 1990s, the institution might not have found itself in such a grave state. Failure to do so brought the Barnes Foundation into financial incapacity and engendered public disappointment at the foundation and its management.

VL. The Barnes Foundation in the 21st Century

After examining the dilemma at the Barnes Foundation, it becomes apparent that Dr. Barnes' hopes for an educational institution have been misrepresented and dishonored. Perhaps the indenture may seem a bit peculiar or too demanding. However, one must be familiar with Dr. Barnes' life and his ideology in order to understand his wishes. Albert Coombs Barnes spurned many individuals (art historians, university staff, etc.) since they rejected his teachings and ridiculed his collection. He may have been extreme in his antagonisms, but he was stalwart in his beliefs that the underprivileged and the working class could benefit from art education. For instance, he had artwork hanging in his Argyrol factory and was delighted to speak with any of the workers about the pieces. He wanted the Barnes Foundation to function in the same way, an educational institution which offered restricted access to the treasures it safeguarded. The small collection was intended to function as resource primarily for the students of his program.

It is unfortunate that the negative traits of Dr. Barnes' personality have had an effect to this day. As mentioned by one of the donor's biographers, Howard Greenfeld, "If Barnes had peacefully assembled his paintings...and directed the educational foundation, he would have been unqualifiedly respected and universally mourned at his death."³² The stigma of Dr. Barnes' ill temper and his abhorrence of art institutions has persistently clouded foundation.

Nowadays, it is very difficult for small institutions to survive. They are challenged by large museums that have substantial budgets and offer changing exhibitions, even blockbusters. Unfortunately, museums are losing sight of their mission. They often forget why they claim a tax-exempt status. Perhaps many feel that the Barnes Foundation should reinvent itself as a

museum rather than an educational institution to keep pace with others. Unfortunately, this would change the unique nature of the Barnes Foundation and would betray the principles that Dr. Barnes established. The benefactor specifically did not name it the Barnes Museum nor the Barnes Gallery. As Howard Greenfeld reminds us in *The Devil and Doctor Barnes: Portrait of an American Collector*, Dr. Barnes was quite familiar with art museums and “for the most part he very much disapproved of the superficial way they ministered to the aesthetic needs of the public.”⁵³ The Barnes Foundation was established as an educational alternative to the typical museum experience.

The careless management team at The Barnes Foundation attempted to overturn the foundation’s structure to save itself financially. The consequences were innumerable. Instead of finding ways to alter the indenture in order to raise operating funds, the Barnes Foundation was drowning in attorney fees. Yet, there were other venues to follow in securing the funds. For instance, the Barnes Foundation could have launched a full-scale fundraising effort. Instead, the foundation busied itself with seeking a court injunction in order to have small fundraisers in the galleries. Once this request was denied, it appears that the trustees no longer pursued fundraising as a priority.

Can a solution be reached without sending the Barnes Foundation into further downfall? What can be done to respect the wishes of Albert Barnes in the 21st century? Is it possible to continue the Barnesian education program, the primary purpose of this shaken institution? The Barnes Foundation is now trying to erase the stigma of past litigation produced by previous management. A new director as well as a new board of trustees are striving to rectify the mistakes of their predecessors as they lead the Barnes into a new century. The trustees are now planning options which will help the Barnes Foundation to stay afloat. The Barnes Foundation is

pursuing different means by which to address its operational deficit. Although there are many routes that the Barnes Foundation can take in order to raise funds, two are currently pursued. The Barnes Foundation applied for grants and has received two from J. Paul Getty Trust and the Pew Charitable Trusts. Additionally, the Barnes has recently begun a massive fundraising effort called "Save the Barnes" which runs through September of 2002. The campaign aims to raise \$500,000. Still, the foundation must resolve to secure corporate donations. Another option is merchandise, specifically a catalogue of its collections. Although the foundation had published *Great French Paintings from The Barnes Foundation* when these works embarked on a world-wide one-time only show, the Barnes has never completed a catalogue of all of its holdings. The Barnes Foundation states that it is working on this project. Perhaps it is time to hasten the process since this publication can generate much necessary revenue.

While improving its financial situation, the Barnes Foundation must remain truthful to its educational mission. Kimberly Camp, the current director, has stated, "The future of the foundation lies in our ability to truly embrace the issue of educating everyday working-class people, our original mission and mandate."⁵⁴ Today, the Barnes Foundation continues its art appreciation programs. Lectures, however, are few and far between. The foundation also provides children's programs as a component of its educational initiative. Yet, the Barnes Foundation must do more in order to fully realize its educational mission. Over the years, trustees have determined that visiting the gallery is an educational experience in and of itself. Thus, exposure of the collection to a broader public is inevitable as is the need to properly inform it. Upon closer examination, it becomes clear that the paintings at the gallery are arranged in a very peculiar manner. The labels that accompany them only identify the artist. Already, the foundation has placed additional object information in the galleries. Informational cards, one per

wall, provide the title of each piece and some limited background. They do not, however, clarify why works are arranged in this manner and what is their visual relationship to each other, a critical element of the Barnesian philosophy. The object information that is currently available does not fully explain the arrangement of the collection that Barnes intended. The potential for learning Barnes' art appreciation approach is lacking, especially if one considers why the foundation was created and the founder's insistence towards the institution's educational mission. Currently, the Barnes Foundation provides audio guides, an excellent way of educating the public. However, not all visitors opt for this device. Although they provide more information than the pamphlets available in each gallery, there is still a limit to the information presented about the works and the way their arrangement relates to Dr. Barnes' ideology.

More importantly, the Barnes Foundation must focus on transforming the limited educational opportunities that it currently offers. A reference to a personal experience buttresses the need for a stronger educational initiative. A graduate class visited the Barnes Foundation where the instructor had arranged to have the director and the educator introduce themselves to the class. If it were not for the educator speaking briefly, in response to the students' questions, about the similar visual elements in certain paintings that were arranged next to one another, the class would have learned nothing about Dr. Barnes' intentions. The informative cards that are provided merely show a diagram and explain basic information of the works. As a visitor, one should be exposed to the fundamental ideals of Dr. Barnes' art appreciation, the sole purpose of the establishment.

Presently, the Barnes Foundation should focus on supplementing the available object information. This can provide an outstanding opportunity for learning the founder's philosophy, since the visitor will understand how the works are arranged. Furthermore, this can be enhanced

with educational programming and perhaps a better approach that will effectively convey Barnes' artistic ideology. It would be advisable for the Barnes Foundation to supplement its current educational initiative. For instance, the catalogue that the Barnes Foundation is currently producing can include excerpts of Dr. Barnes' philosophy as they relate to the works and the collection as a whole. Hence, not only will the reader be introduced to the Barnes Foundation's treasures, he or she will also gain an understanding of how the institution was created and why it is so unique. Many institutions nowadays also show educational videos. This option is particularly useful in house museums which provide limited tours. It is a viable means that can be adapted in order to fully realize the educational core of the Barnes Foundation mission. Upon paying the admittance fee, visitors can be ushered to watch a short video about Dr. Barnes' philosophy and why the arrangements on the walls are so bizarre. That way, before entering the galleries the visitor would gain at least some background knowledge of this unusual gallery. This would be an effective means of reaching the public and providing a necessary framework of reference that is so vital to understanding the collection. Its uniqueness should be reinforced as the foundation's greatest asset. This message would not only create a deeper appreciation for the collection but also strengthen a support for the foundation's mission.

The Barnes Foundation is a treasure that provides insight into the eccentricity of collecting in the United States in the early 20th century. As such, it should be preserved as intended. Although the essence of the collection is strictly guarded by the indenture, the latter could be legally altered in order to further the mission while meeting public approval. The trustees of the Barnes Foundation failed to incorporate the mission in their decision making process. The dilemmas experienced as a result should serve as an example to other institutions. One cannot stress enough the importance and necessity of following both legal and ethical codes

of conduct. Indeed, a restricted indenture can create a crisis but a bitter plight can ensue if one does not adhere to proper standards. Today, the Barnes Foundation is entering itself into a new era. Can the fragile educational institution survive and rectify its past? The hope lies in a strong and qualified leadership that can regain public confidence while focusing on developing new methods in bridging the intent of the donor and managing the collection in a new and changing environment. To permit the Barnes Foundation to fall short of its great potential is to deprive the public and the art world of a unique aesthetic and educational experience.

Notes

- ¹ Wooster, 1995, 2.
- ² <http://hometown.aol.com/barneswtch/index.html>, 2001.
- ³ http://www.barnesfoundation.org/h_mission.html, 2001.
- ⁴ Feigen, 2000, 72.
- ⁵ Decker, 1992, 107-108.
- ⁶ Garfield, 1982, 391.
- ⁷ Decker, 1992, 107-108.
- ⁸ Andrae, 1993, 16.
- ⁹ Greenfeld, 1987, 282.
- ¹⁰ Schack, 1960, 399.
- ¹¹ Greenfeld, 1987, 74.
- ¹² Higgonnet, 1994, 62.
- ¹³ <http://hometown.aol.com/barneswtch/index.html>, 2001.
- ¹⁴ <http://www.charitylaw.ca/gifts.html>, 2001.
- ¹⁵ Kimmelman, 1991, H35.
- ¹⁶ Ibid., H35.
- ¹⁷ Decker, 1992, 108.
- ¹⁸ Robinson, 1991, 39.
- ¹⁹ <http://hometown.aol.com/barneswtch/index.html>, 2001.
- ²⁰ Ibid.
- ²¹ <http://www.cosmopolis.ch/english/cosmo13/barnes.htm>, 2001.
- ²² <http://www.theartnewspaper.com/news/article.asp?idart=3173>, 2001.
- ²³ Kerkstra, 2001, 1.
- ²⁴ Lerner and Bresler, 1989, 1271.
- ²⁵ Ibid., 1271.
- ²⁶ Ibid., 1427.
- ²⁷ Malaro, 1994, 14.
- ²⁸ Carter, 2000, 10.
- ²⁹ <http://www.aam-us.org/aamcoe.htm>, 2001.
- ³⁰ Pappas, 1996, 122.
- ³¹ <http://www.aam-us.org/aamcoe.htm>, 2001.
- ³² Weil, 1993, 480.
- ³³ Malaro, 1998, 144.
- ³⁴ Ibid., 144-145.
- ³⁵ Urice, 1993, 499.
- ³⁶ Kent, 1991, 152.
- ³⁷ <http://hometown.aol.com/barneswtch/index.html>, 2001.
- ³⁸ Gibson, 1991, 38.
- ³⁹ Gibson, 1993, 21.
- ⁴⁰ Carr, 2001, 31.
- ⁴¹ Malaro, 1998, 35.
- ⁴² Ibid., 17.
- ⁴³ Ibid., 18.
- ⁴⁴ Ibid., 83.
- ⁴⁵ The American Heritage Dictionary, 1985, 467.
- ⁴⁶ <http://www.icom.org/ethics.html>, 2001.
- ⁴⁷ Gibson, 1991, 38.
- ⁴⁸ Ibid., 39.
- ⁴⁹ D'Arcy, 1991, F1.
- ⁵⁰ <http://www.icom.org/ethics.html>, 2001.
- ⁵¹ <http://www.aam-us.org/aamcoe.htm>, 2001.
- ⁵² Greenfeld, 1987, 3.
- ⁵³ Anon., 1996, 1.
- ⁵⁴ Clines, 2001, 1.

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APPENDIX A. BY-LAWS of the BARNES FOUNDATION

ARTICLE I - Name The name of this corporation shall be "The Barnes Foundation".

ARTICLE II - OBJECTS The objects for which this corporation is formed are as follows:

To promote the advancement of education and the appreciation of the fine arts; and for this purpose to erect, found and maintain, in the Township of Lower Merion, County of Montgomery, and State of Pennsylvania, an art gallery and other necessary buildings for the exhibition of works of ancient and modern art, and the maintenance in connection therewith of an arboretum, wherein shall be cultivated and maintained trees and shrubs for the study and for the encouragement of arboriculture and forestry, together with a laboratory of arboriculture, if the same shall be found necessary, said arboretum and laboratory to be conducted independently or in connection with the department of forestry of any university founded and conducted under the laws of the Commonwealth of Pennsylvania.

ARTICLE III - MEETINGS

{Section 1 amended on June 1, 1967} Section 1. Annual Meeting. The annual meeting of the Board of Trustees shall be held on the first Wednesday in December in each and every year. At said meeting the Trustees shall elect a President, a Vice-President, a Secretary and a Treasurer. The President and Vice-President shall be members of the Board. The Secretary and Treasurer may or may not be members of the Board. The officers shall serve until the next annual meeting or until their successors shall be respectively duly elected and qualified. The Secretary shall give at least ten days written notice of said annual meeting by mailing such notice to each Trustee at his or her address as the same shall be registered on the book of the corporation.

Section 2. Special Meetings. Special Meetings of the Board of Trustees may be held at any time at the principal office of the corporation upon forty-eight hours' notice given by mailing such notice to the address of each Trustee as the same shall be upon the records of the corporation.

Section 3. Stated Meetings. Stated meetings of the Board of Trustees may be held at such stated times as the Board may by standing resolution fix.

Section 4. Quorum. Three members of the Board of Trustees shall constitute a quorum for the transaction of business.

Section 5. Meetings without Notice. Any meeting of the Board of Trustees, regular or special, shall be lawful, whether notice thereof shall or shall not have been given in accordance with these by-laws, if held at the principal office of the corporation and attended by all members of the Board of Trustees.

ARTICLE IV - The BOARD of TRUSTEES

Section 1. Membership. The Board of Trustees shall consist of five persons. Those Trustees chosen for the organization of the corporation, being Albert C. Barnes, Laura L. Barnes, Joseph Lapsley Wilson, Nelle E. Mullen and Mary Mullen, shall serve for the term of five years from the first Wednesday of December, 1922.

Section 2. Succession to Membership in the Board of Trustees. Upon the expiration of his or her term of office, or the resignation or death of any member of the Board of Trustees named in Section 1, his or her successor shall be elected for a term of five years from the date of the annual meeting at which such election shall take place, or should such election take place at a special or stated meeting, then for the term of five years from the date of the annual meeting next succeeding the time of such election. During the lives of Albert C. Barnes and Laura L. Barnes, and the life of the survivor of them, only individual trustees shall be chosen as successor to trustees named in the charter or elected as successors to them, and such individual trustees shall be chosen and selected by the majority vote of the remaining trustees then in office. Should any successor trustee die or resign, his or her successor shall be elected in like manner, and for a term of five years to begin and be calculated as is above provided. After the death of the survivor of Albert C. Barnes and Laura L. Barnes, the first vacancy which may occur in the Board of Trustees shall be filled by election of a person nominated by such trust company or financial institution as may then be treasurer of the corporation. The next vacancy which shall occur shall be filled by the election of a person nominated by the Board of Trustees of the Pennsylvania Academy of the Fine Arts. The next vacancy which shall occur shall be filled by the election of a person nominated by the Board of Trustees of the Pennsylvania Academy of the Fine Arts; it being understood that vacancies above recited are vacancies occurring by the death of individual trustees elected prior to the death of individual

trustees elected prior to the death of the survivor of Albert C. Barnes and Laura L. Barnes; it being further the intent that as to vacancies occurring by the expiration of the term, death or resignation of trustees named by the board of directors of such financial institution and the Board of Trustees of the University of Pennsylvania and the Pennsylvania Academy of the Fine Arts, any such vacancy shall be filled by the election of a person nominated to fill such vacancy by the same Board which nominated the retiring or deceased trustee, or trustee whose term expires. Of the trustees to be elected upon nomination of the University of Pennsylvania one may be one of the professors in the School of Fine Arts connected with said University; but under no circumstances shall any of the trustees be connected with any school or institution of industrial or applied art, with the single and sole exception of architecture. The term of any successor trustee elected subsequent to the death of Albert C. Barnes and Laura L. Barnes shall be three years from the annual meeting at which successor is elected, or if elected at a special meeting, three years from the next succeeding annual meeting after such election.

ARTICLE V - MEMBERSHIP {1922 }

Section 1. The membership of this corporation shall consist perpetually of the five trustees named in the charter and their successors elected as in these bylaws provided, and those only. Upon the death of the survivor of Albert C. Barnes and Laura L. Barnes, a trust company or a corporation having the powers now held by trust companies under the laws of Pennsylvania and doing business in Philadelphia or Montgomery County, shall be selected as Treasurer of the corporation, and thereafter forever the Treasurer of the corporation shall be such trust company which shall be duly elected to said office by the Board of Trustees. No bond shall at any time be required by the Board of Trustees of such corporate Treasurer. The Board of Trustees shall choose as such Treasurer any company nominated in writing to it by Albert C. Barnes during his lifetime, and such Treasurer so chosen shall remain Treasurer until its dissolution or resignation as such.

FURTHER RESOLVED, that the said supplemental Indenture and Agreement this day approved, be and is hereby made a part of the By-Laws of this corporation; Article IX, Section 2 of the By-Laws is hereby amended to accord with and conform to Paragraph numbered 17 of said supplemental Indenture and Agreement. The term of any successor Trustee elected subsequent to the death of Donor and his said wife shall be five years from the annual meeting at which such successor is elected, or, if elected at a special meeting, five years from the next succeeding annual meeting after such election. The Trustees of the Donee shall control both the art gallery and the arboretum of the Donee, both of which are integral parts of the educational resources of the Donee. It is further stipulated that the identity of Donee as an educational institution is to be preserved for all time and Donee is not to be merged in or absorbed by any other institution; its facilities are to be made available, under proper rules and regulations of the Board of Trustees, to all properly qualified educational institutions.

ARTICLE VI - OFFICERS

Section 1. General. The officers of the corporation shall be a president, vice-president, a secretary and a treasurer. Any two of said offices except those of president and vice-president may at the pleasure of the Board of Trustees be held by the same person, except that when a corporate treasurer is elected the secretaryship may not be held by said corporate treasurer.

Section 2. The President. The President shall be the presiding officer at the meetings of the Board of Trustees. He shall have general executive control of the affairs of the corporation.

Section 3. The Vice-President. The Vice-President shall perform the duties of the President during his absence or disability.

Section 4. The Secretary. The Secretary shall keep the minutes of the corporation, shall have the custody of its corporate seal, shall affix the same to such documents as may require it, and shall perform such duties as usually appertain to that office. Before entering upon the duties of the office the Secretary shall take an oath to perform the same with fidelity.

Section 5. The Treasurer. The Treasurer shall have general custody of the assets and funds of the corporation and shall disburse them for the purposes of the corporation under the direction of the Board of Trustees. The Treasurer shall, if required by the Board of Trustees, give a bond to the corporation in such amount as the Board of Trustees shall require, the premium for such bond to be paid by the corporation. The Treasurer shall keep or cause to be kept proper and adequate books of account and records showing the receipt and disbursement of the moneys of the corporation. Upon the death of the survivor of Albert C. Barnes and Laura L. Barnes a trust company or a corporation having the powers now held by trust companies under the laws of Pennsylvania and doing business in Philadelphia or Montgomery County, shall be selected as Treasurer of the corporation, and thereafter forever the treasurer of the corporation shall be such trust company which shall be duly elected to said office by the

Board of Trustess [sic], No bond shall at any time be required by the Board of Trustees of such corporate treasurer. The Board of Trustees shall choose as such treasurer any company nominated in writing to it by Albert C. Barnes during his lifetime, and such treasurer so chosen shall remain treasurer until its dissolution or resignation as such.

ARTICLE VII - FUNDS

{Amended on May 31, 1966 } The funds of the corporation shall be deposited in the name of the corporation in one or more of such banks or trust companies as may be approved from time to time by the Board of Trustees, and shall be withdrawn only upon checks or other orders signed by the treasurer of the corporation or such other officer as the Board of Trustees may from time to time designate; provided, however, that after the death of Albert C. Barnes and Laura L. Barnes the Board of Trustees may in its discretion require that checks or other orders drawn must be signed by both the treasurer and one of the other officers as may from time to time be prescribed by the Board of Trustees. The corporate treasurer hereinablve [sic] provided for may keep on deposit the funds of the corporation in its own deposit department.

ARTICLE VIII - SEAL The seal of the corporation shall consist of two concentric circles, within which shall be the words "The Barnes Foundation," and in the centre (sic) shall appear the word "Penna. 1922."

ARTICLE IX - MANAGEMENT of the CORPORATION

Section 1. Preamble. This corporation is organized for the purposes set forth in the charter and in Article II of these by- laws. In order to enable it to carry out its said object it has or is about to receive a certain gift or donation from Dr. Albert C. Barnes, who has been the moving spirit in its organization and incorporation. Said donation is made by virtue of a certain Indenture and Agreement dated the sixth day of December, 1922. Said Indenture and Agreement contains the conditions and stipulations upon which said donation is made to and received by this corporation. Said Indenture and Agreement is therefore to be made a part of the by-laws of this corporation and binding upon this corporation in the management of the funds and property so donated to it and entrusted to its care.

Section 2. Said Indenture and Agreement is hereby made in its entirety a by-law of this corporation, and is as follows:

INDENTURE AND AGREEMENT made and entered into by and between ALBERT C. BARNES, of Merion, Montgomery County, Pennsylvania, party of the first part, herein after called "Donor"; and THE BARNES FOUNDATION, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, party of the second part, hereinafter called the "Donee."

WHEREAS, Donee has for its corporate purpose the promotion of the advancement of education and the appreciation of the fine arts; and

WHEREAS, Donor, as Trustee for said corporation, has taken title to a tract of land heretofore owned by Joseph Lapsley Wilson, situate in Lower Merion Township, Montgomery County, Pennsylvania, and has on behalf of Donee proceeded with the preparation of the plans, specifications and contracts for the erection of certain buildings suitable for the purposes of Donee upon said land, and

WHEREAS, Upon the said land there now exists an arboretum created by Joseph Lapsley Wilson; and

WHEREAS, Donor is the owner of a valuable collection of works of art, including paintings, sculpture, drawings, etchings and lithographs which it is intended shall become the property of the Donee and shall be placed in the gallery to be erected upon the said tract of land; and

WHEREAS, Donor desires to endow said art gallery and arboretum to the end that the educational work for which Donee is organized may be adequately accomplished; and

WHEREAS, the said land and improvements thereupon or contemplated immediately to be made thereupon, the said works of art, and the endowment herein provided amount in value to approximately \$6,000,000;

NOW, THEREFORE, In consideration of the premises and in consideration of the mutuality hereof and of the covenants made by Donee herein with Donor, it is mutually covenanted and agreed by and between the parties as follows:

{December 6, 1922} 1. Donor shall forthwith, upon the execution of this Indenture and Agreement by the parties hereto, convey and transfer unto Donee the said tract of land lately owned by Joseph Lapsley Wilson, situate in Lower Merion Township, Montgomery County, Pennsylvania, which premises now stand of record in the name of Donor as Trustee of The Barnes Foundation, together with all the buildings and improvements, fixtures, easements and appurtenances thereon situate or thereunto belonging or appertaining.

{December 6, 1922} 2. Donor will at the same time transfer, assign and convey to Donee any and all plans, specifications and contracts heretofore made and entered into by him for the improvement of said tract of land and for the erection thereon of buildings.

{December 6, 1922} 3. Donor will at the same time convey, assign set over and transfer unto Donee by proper bill of sale all that certain collection of works of art consisting of paintings, sculpture, drawings, etchings and lithographs now owned and possessed by Donor and situate and located in Donor's residence in Lower Merion Township, Montgomery County, Pennsylvania, as said collection of works of art shall exist and be at the time of the execution of such bill of sale or instrument of transfer.

{December 6, 1922} 4. Donor will at the same time by a contract, copy whereof is hereto annexed, marked Exhibit A, and made a part hereof, as fully as if herein at length set forth, which contract shall be executed by both parties hereto, transfer and set over unto Donee 900 shares of the common capital stock of A.C. Barnes Company, a corporation of the Commonwealth of Pennsylvania.

{December 6, 1922} 5. The said conveyances, transfers and contracts so to be made by Donor to and with Donee as in the preceding paragraphs hereof set forth are to be made and the property thereby comprehended and covered is to be taken and held by Donee upon the following express covenants and conditions, and none others; and Donee expressly covenants and agrees that in consideration of the making of this agreement and of the conveyances and contracts in this agreement stipulated to be made by Donor, Donee will take and hold the property so comprehended and covered in conformity with the following express covenants and agreements and will strictly and faithfully observe and perform the same.

{December 6, 1922} 6. The covenants and conditions in the Indenture and Agreement of December 6, 1922, as the same are modified hereby, shall be irrevocably embodied in the by-laws of Donee; and said by-laws shall be revised and amended accordingly. Said by-laws, so amended to embody the provisions the said Indenture of December 6, 1922, as hereby modified, shall be irrevocable, except by and in accordance with the terms of any further supplemental indenture and agreement which may hereafter be executed between Donor and Donee in due form of law.

{October 20, 1950} 7. During the life of Donor he shall be director of the Art Gallery and in charge of the collection of pictures, but without salary. After the death of Donor, Laura L. Barnes, Donor's wife, shall, during the term of her natural life, be the president of Donee and Director of Arboretum at a salary of not less than \$30,000 per annum; Nelle E. Mullen shall be Administrative executive (usually known as general manager) of Donee and Violette de Mazia shall be Director of Education of the Art Department of Donee.

{December 6, 1922} 8. During Donor's life Donor shall have the absolute power and discretion to cause to be sold or exchanged by Donee any of the works of art now contained in said collection, as in the judgement of Donor may be advantageous for improving said collection. Donor reserves to himself this right, power and discretion for the reason that he has created said collection and best understands what may be necessary in the way of sale or exchange to complete it, perfect it and render it more adequate.

{April 30, 1946} 9. At the death of Donor the collection shall be closed, and thereafter no change therein shall be made by the purchase, bequest or otherwise obtaining of additional pictures, or other works of art, or other objects of whatsoever description. Furthermore, after the death of Donor and his wife, no buildings, for any purpose whatsoever, shall be built or sold or otherwise disposed of except that if any picture passes into a state of actual decay so that it no longer is of any value it may be removed for that reason only from the collection.

{December 6, 1922} 11. Should the said collection ever be destroyed, or should it for any other reason become impossible to administer the trust hereby created concerning said collection of pictures, then the property and funds contributed by Donor to Donee shall be applied to an object as nearly within the scope herein indicated and laid down as shall be possible, such application to be in connection with an

existing and organized institution then in being and functioning in Philadelphia, Pennsylvania, or its suburbs.

{December 6, 1922} 12. Donor is now making plans and executing contracts for the construction of a gallery and adjacent buildings on the lot of ground hereinabove mentioned; and the scope, character and location of said gallery and adjacent buildings is to be solely in accordance with the desire, judgement and discretion of Donor. The Donor and his wife, Laura L. Barnes, and the survivor of them, shall be entitled to live in the administration buildings adjacent to the gallery during their joint lives and the life of the survivor of them, rent free. This condition and stipulation is necessary in order that Donor and his said wife may during their lives arrange, complete and make as in their discretion they deem best the said collection of paintings adequate to the purposes intended, and may develop and complete the arboretum hereinafter mentioned.

{December 6, 1922} 13. No part or portion of the art gallery nor of the administration buildings adjacent thereto to be occupied by Donor and wife as above provided, shall be occupied as or for a residence after the death of the survivor of the Donor and his wife; except as hereinafter provided. After the death of the Donor and his said wife, the furniture, the rare and valuable collection of rugs, together with the Chinese vases and other objects of art, but exclusive of the paintings, that are located in the administration building, shall be sold as expeditiously as may be found necessary at public auction. All the paintings shall remain in exactly the places they are at the time of the death of Donor and his said wife. It is the intent of the Donor that after his death and the death of his said wife, whichever shall last occur, the administration building is to be used as class rooms and to serve the general purpose of The Barnes Foundation, that is the promotion of the advancement of education and the appreciation of the fine arts. But the details of the particular manner in which the administration building and its contents may best serve the above stated purpose will have to be developed by experience after the Foundation has been in operation for a term of years. It is the intent of this stipulation that no individual, institution, academy, college or university shall use or employ the administration building or its contents for any purpose other than promotion of the advancement of education and the appreciation of the fine arts, and only in connection with the purposes of The Barnes Foundation as stated and implied in the covenants and agreements as set forth in various aspects of this Indenture and Agreement. After the death of Donor and his wife, no part of said administration buildings, except the servants' quarters marked B 107, 108, 109, 110, 111, C 209, 210, 211, 212, 213, 214, on a plan now existing and prepared for Donor marked "Exhibit B" and identified by the signature of Donor and the signatures of the proper officers of Donee, shall be occupied only by the caretaker, whose function shall be to protect the art gallery and the administration building and the contents of each, against fire, theft, vandalism or other untoward acts of any person or persons during such hours of the day and night when officials or other employees of The Barnes Foundation are not on duty at their respective posts. Said caretaker shall not be allowed to use for his or his family's private use or purpose, any of the rooms or contents of the administration buildings, except those rooms marked B 107, 108, 109, 110, 111, C 209, 210, 211, 212, 213, 214 on Exhibit B. The said rooms constitute a comfortable and well-equipped residence which said caretaker shall occupy rent free so long as he shall be employed as caretaker by The Barnes Foundation.

{April 30, 1946 } 14. Donee shall maintain and extend the arboretum now existing; said arboretum shall always be known as the Arboretum of The Barnes Foundation.

{December 6, 1922} 15. After the death of Donor and his said wife the living quarters in the building marked on the said plan, Exhibit B", as a garage and tool house, may be used as living quarters for the caretaker of the grounds of the Donee. If found necessary during Donor's life, but not after his death, there may be erected upon said tract of land a laboratory and lecture hall in connection with said arboretum, at a cost not in excess of \$200,000, including furnishings, which laboratory and lecture hall shall be located in exactly the place designated on the said plan "Exhibit B" hereof and no other place. Said building shall be designated and known as the Joseph Lapsley Wilson Memorial. It shall be of the same style of architecture as the art gallery and administration buildings and of no other style.

{December 6, 1922} 16. All of the buildings and improvements of Donee shall at all times be kept in first-class order and repair.

{October 20, 1950 } 17. During the joint lives of Donor and his wife, Laura L. Barnes, and during the life of the survivor of them, the Board of Trustees of Donee shall consist of individuals, the successor of any Trustee who may resign, become incapacitated, or die, to be elected by the remaining Trustees of Donee. Upon the death of the survivor of Donor and his said wife, the Trustees in office at the death of the survivor of Donor and his wife shall serve out their current terms and each upon completion of their current term shall respectively be elected as Trustee for an additional term and so on from term to term until they respectively resign, become incapacitated or die. The vacancy occurring in the Board of

Trustees by the death of the survivor of Albert C. Barnes and Laura L. Barnes - or if no vacancy then occurs - the first vacancy that occurs by reason of the resignation, incapacity or death of a Trustee then in office - shall be filled by the election of a person nominated by the financial institution which shall be Treasurer of Donee, and the next four vacancies which occur by the resignation, incapacity or death of Trustees who were in office at the time of death of the survivor of Albert C. Barnes and his said wife shall be filled by election of persons nominated by Lincoln University of Lincoln University, Chester County, Pennsylvania. Thereafter vacancies occurring by the expiration of the term, death, incapacity or resignation of the Trustees nominated by the Board of Directors of such financial institution and the Board of Trustees of Lincoln University, shall be filled by the election of a person nominated to fill such vacancy by the Board of Directors or Trustees which nominated the retiring, incapacitated or deceased Trustee, or Trustees, whose term expired. Provided, however, anything to the contrary herein notwithstanding, that no Trustee shall be a member of the faculty or Board of Trustees or Directors of the University of Pennsylvania, Temple University, Bryn Mawr, Haverford or Swarthmore Colleges, or Pennsylvania Academy of the Fine Arts. The term of any successor Trustee elected subsequent to the death of Donor and his said wife shall be five years from the annual meeting at which such successor is elected, or, if elected at a special meeting, five years from the next succeeding annual meeting after such election. The Trustees of the Donee shall control both the art gallery and the arboretum of the Donee, both of which are integral parts of the educational resources of the Donee. It is further stipulated that the identity of the Donee as an educational institution is to be preserved for all time and Donee is not to be merged in or absorbed by any other institution; its facilities are to be made available, under proper rules and regulations of the Board of Trustees, to all properly qualified educational institutions.

{December 4, 1940 } 18. The treasurer of Donee shall from the date of the death of the survivor of Donor and his said wife be the GIRARD TRUST COMPANY of Philadelphia, Pennsylvania.

{January 29, 1941 } 19. The Board of Trustees of Donee shall serve without compensation. The corporate treasurer of Donee which is to take office after the death of the survivor of Donor and his said wife shall receive as its compensation two (2%) per cent on the income administered by it.

{October 20, 1950 } 20. That Nelle E. Mullen shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Twelve Thousand Dollars (\$12,000) per year for the balance of her life, notwithstanding her possible physical disability in the future which may prevent her from active service; that Mary Mullen shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Five Thousand Dollars (\$5,000) per year for the balance of her life, notwithstanding her possible physical disability in the future which may prevent her from active service; that Violette de Mazia shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Ten Thousand Dollars (\$10,000) per year for the balance of her life, notwithstanding her possible physical disability in the future which may prevent her from active service; that Albert Nulty shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Five Thousand Six Hundred Dollars (\$5,600) per year for the balance of his life, notwithstanding his possible physical disability in the future which may prevent him from active service, and upon his death the same amount per year shall be paid to his wife, if she shall survive him, during her life, or until she should remarry; that James Gray shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Two Thousand Eight Hundred Dollars (\$2,800) per year for the balance of his life, notwithstanding his possible physical disability in the future which may prevent him from active service, and upon his death the same amount per year shall be paid to his wife, Lillian Gray, during her life, or until she should remarry; that Paul B. Hogans shall be employed by and shall receive a compensation from the Barnes Foundation at the rate of Two Thousand Four Hundred Dollars (\$2,400) per year for the balance of his life, notwithstanding his possible physical disability in the future which may prevent him from active service, and upon his death the same amount per year shall be paid to his wife, Frieda Hogans, during her life or until she should remarry. Angelo Pinto, if employed by the Barnes Foundation, shall receive a compensation at the rate of Four Thousand Eight Hundred Dollars (\$4,800) per year for as long a period of time as he shall remain in the service of the Barnes Foundation and upon his death the amount of Three Thousand Six Hundred Dollars (\$3,600) shall be paid to his wife, Gertrude Pinto, during her life or until she should remarry. Each of the following employees of the Barnes Foundation, viz:- Nicholas Valle, Christopher Naughton, John McBride, George Boyd, David Aiken, Jr., Thomas Miller, Martin Reilly, William S. Hampel, Harry McNutt, Patrick J. Gallagher, who is in the employ of Barnes Foundation at the time of the death of Donor, shall be employed by the Foundation for such employee's respective life at the same rate of salary he is receiving from the Foundation at the time of death of Donor, provided that if, while in the service of the Foundation, he becomes permanently incapacitated for work he shall thereafter, in lieu of such salary, be paid by the Foundation a pension of Two hundred dollars (\$200) per month during the balance of his life, and in case he dies, while in the service of or on pension by the Foundation, leaving his present wife a widow him surviving, the Foundation shall thereafter pay Two Hundred dollars

(\$200) per month to his widow during her life, or until she remarries. In case of dispute as to whether any such employee is permanently incapacitated for work, the decision of the Trustees of the Foundation shall govern.

{October 20, 1950 } 21. Donee shall, after the death of Donor, employ an art director at a salary not to exceed \$5,000 per annum, whose function shall be to supervise the gallery, to see that the paintings are properly cared for and perform such other duties as may be necessary to carry out such educational work as comes within the purview of the Art Department of Donee. The said art director shall devote his full time exclusively to the aforesaid work, except for one month's vacation each year, and shall perform his functions on the premises of the Barnes Foundation and not elsewhere.

{December 4, 1940} 22. Donee may employ a suitable person as a Curator of the Arboretum, at an annual salary not exceeding six thousand (\$6,000) dollars. The work of the said curator shall be done, if feasible, under the auspices of an educational institution chartered under the laws of the Commonwealth of Pennsylvania, located in Philadelphia or its suburbs, subject always, nevertheless, to the control and direction of the Board of Trustees of Donee.

{October 20, 1950 } 23. In connection with the Art Gallery and the art educational work of Donee, Donee shall employ not more than four men as gallery attendants and watchmen at salaries not exceeding \$3,000 per annum, one engineer who shall be in charge of all apparatus for heat and moisture controls, air-conditioning and similar or allied matters, at a salary not to exceed \$3,500 per annum, and one stenographer and clerk at a salary not to exceed \$3,500 per annum, and the administration of salaries paid to the Donor's wife, to the Art Director and the Director of Education, shall in no year exceed a total of \$24,000.

{October 20, 1950 } 24. In connection with the Arboretum and in addition to the superintendent and curator thereof, Donee shall employ sufficient men at a salary not exceeding \$3,500 per annum each, the total expenditure for the salaries of said men, shall not exceed \$24,000, and may also employ lecturers, not exceeding six (6) in number at a salary not exceeding \$1,500 per annum each. Each lecturer shall give at least one lecture a week from September to May, inclusive.

{December 6, 1922} 25. In addition to the employees above specified, Donee may employ such cleaners and janitors for the art gallery and buildings connected therewith, and if erected, for the Joseph Lapsley Wilson Memorial, as may be necessary, at a gross expenditure per annum of not to exceed \$6,000. No other administrative or executive officers or clerical assistants shall be engaged or employed by Donee except those above specified.

{December 6, 1922} 26. Donor may from time to time add additional funds by way of endowment, by gift of the same to Donee. Any such additional funds when received by Donee shall constitute a part of Donee's endowment fund with the same force and effect as if the same had originally been transferred and paid over to Donee at the time of the making of this Indenture and Agreement, and shall be administered as a part of such endowment upon the same terms and conditions and under the same limitations and stipulations as are in this Indenture and Agreement set forth, and not otherwise.

{January 29, 1941 } 27. During the Donor's lifetime moneys available for investment or reinvestment, whether principal or income, may be invested in any good securities whether legal investments for Trustees or not; but after Donor's death, such moneys may only be invested by Donee in such obligations of the United States of America, obligations of the several States of the United States and obligations of municipal corporations and districts in the several States of the United States which are legal investments for savings banks under the laws of the State of New York.

{April 30, 1946 } 28. After the death of Donor and his said wife, any excess of income of Donee from the endowment contributed by Donor over and above the needs of the Donee for its art gallery and collection of pictures and the extension and administration of its Arboretum shall annually be contributed by Donee for the creation of scholarships and/or otherwise for the promotion of education in the fine arts, horticulture and arboriculture. No part of said income which would be contributed by Donee as herein provided is to be used for prizes given to painters, sculptors or students, for paintings, sculpture, drawings or other concrete works of art produced by said painters, sculptors or students.

{December 6, 1922} 29. During the lifetime of Donor and his said wife the art gallery of Donee shall only be open to the public on not more than two days in each week, except during July, August and September of each year, and only upon cards of admission issued by or under the direction of the Board of Trustees of Donee. During said period students of art shall be admitted by special arrangement under regulations to be prescribed by the Board of Trustees of Donee. Donor makes these provisions and

stipulations for the reason that said art gallery is founded as an educational experiment under the principles of modern psychology as applied to education, and it is Donor's desire during his lifetime, and that of his wife, to perfect the plan so that it shall be operative for the spread of the principles of democracy and education after the death of Donor and his wife.

{April 30, 1946} 30. After the death of Donor and his said wife, the gallery and the arboretum shall be open five days in each week, except during the months of July and August of each year- and solely and exclusively for educational purposes- to students and instructors of institutions which conduct courses in art and art appreciation, which are approved by the Trustees of Donee. On Saturday of each week, except during the months of July and August of every year, the gallery and the arboretum shall be open to the public between the hours of ten o'clock in the morning and four o'clock in the afternoon, under such rules and regulations as the Board of Trustees of Donee may make. It will be incumbent upon the Board of Trustees to make such rules and regulations as will ensure that the plain people, that is, men and women who gain their livelihood by daily toil in shops, factories, schools, stores and similar places, shall have free access to the art gallery and the arboretum upon those days when the gallery and the arboretum are to be open to the public, as hereintore provided. On Sunday of each week during the entire year the gallery and the arboretum shall be closed to students and public alike. It shall be incumbent upon the Board of Trustees of the Donee to make such rules and regulations that will protect the works of art in the gallery and the trees, shrubs and plants constituting said arboretum.

{December 6, 1922} 31. Until the gallery to be constructed upon the tract of land above mentioned shall have been completed to such extent as in the judgement of Donor will make it safe and feasible to transfer the said collection of paintings thereto, said collection shall remain in Donor's residence, where now situated, or should it in Donor's judgement become requisite to remove the same from said residence for any reason the same shall be placed and housed in such place and under such conditions as the Donor shall specify. Meantime neither Donor nor Donee shall be under any obligation to keep the same insured in any manner, it being impracticable adequately or properly to insure the same; no insurance moneys being in any sense adequate to replace or repair the same in case of fire or other casualty.

{December 6, 1922} 32. The conveyance of the said real estate, together with the arboretum thereupon situate, the buildings, fixtures and appurtenances thereon or thereunto belonging and appertaining, by Donor to Donee, shall be irrevocable. The establishment of the art gallery is an experiment to determine how much practical good to the public of all classes and stations of life, may be accomplished by means of the plans and principles learned by the Donor from a life-long study of the science of psychology as applied to education and aesthetics. If, at any period during the lifetime of the Donor, the Board of Trustees decide that the experiment is a failure, they may, by appropriate resolution, dispose of the paintings, by gift or otherwise, to any individual, institution, museum, school or college, specified by the Board of Trustees. It may, however, hereafter appear that some one or more of the trusts, conditions and stipulations upon which Donee takes and holds the same as in this Indenture and Agreement set forth are improper or impracticable and should be modified. The same may only be modified by a written agreement between Donor and Donee executed in due form of law, but the right so to modify the same without impairing the objects and purposes in this Indenture and Agreement set forth is reserved to the parties in the manner in this paragraph specified.

{December 6, 1922} 33. The purpose of this gift is democratic and educational in the true meaning of those words, and special privileges are forbidden. It is therefore expressly stipulated by the Donor that at no time after the death of said Donor, shall there be held in any building or buildings any society functions commonly designated receptions, tea parties, dinners, banquets, dances, musicales or similar affairs, whether such functions be given by officials, Trustees or employees of the Barnes Foundation or any other person or persons whatsoever, or whether such functions be private or public. It is further stipulated that any citizen of the Commonwealth of Pennsylvania who shall present to the courts a petition for injunction based upon what reputable legal counsel consider is sufficient evidence that the above mentioned stipulation has been violated, shall have his total legal expense paid by the Barnes Foundation.

{April 30, 1946 } 34. At no times after the death of the Donor shall the art gallery be used for exhibitions of paintings or other works of art, or of any work whatsoever, that are not the property of the Barnes Foundation. At no time after the death of the Donor shall the art gallery be used for painting, drawing or sculpturing by any person or persons, whether said persons be students or instructors of The Barnes Foundation or from any other institution where students are instructed how to paint, draw or sculpture. This means specifically that The Barnes Foundation is to be maintained perpetually for education in the appreciation of the fine arts and not as a school for instruction in painting, drawing,

sculpturing or any other branch of art or craftsmanship. This restriction also prohibits the copying of any of the works of art of The Barnes Foundation by any person whatsoever.

{December 6, 1922} 35. No painter, sculptor or other artist of any description whatsoever will ever be permitted to use any of the buildings, or the contents of those buildings, for the instruction of pupils who pay or ever paid a fee to that artist, sculptor, etc, for private instructions in art or other form of education.

{December 6, 1922} 36. The stock of A.C. Barnes Company constituting a portion of this gift has in great degree acquired its value and its earning capacity through the intelligence and efforts of Nelle E. Mullen, Mary Mullen and Laura V. Geiger. Said persons have, through their long service in said corporation, acquired an experience, knowledge of its policies and of the administration of its affairs which is invaluable. In the interest of The Barnes Foundation Donor therefore requires that for a period of not less than five (5) years after Donor's death, or the death of his wife, whichever shall last occur, all of said persons shall continue the active conduct, including the manufacturing, executive and clerical services, of the business of A.C. Barnes Company, at salaries of the same amount as the books of said company show that they were respectfully receiving at the date of the death of the Donor or his wife, whichever shall last occur, and that said Nelle E. Mullen and Mary Mullen shall continue to be Directors of said A. C. Barnes Company and that Laura V. Geiger shall be elected to the Board of Directors of A.C. Barnes Company. Donee will exercise its rights as a stockholder of said company in such manner as to carry out the provisions of this paragraph. In token of her agreement to the terms and conditions of this Indenture and Agreement, and in token of her agreement to join in any conveyance requisite to carry out the true intent hereof, Donor's wife, Laura L. Barnes, has joined as a party herein. The Barnes Foundation, party of the second part hereto, doth hereby constitute and appoint Joseph Lapsley Wilson to be its attorney for it and in its name and as and for its corporate act and deed to acknowledge this Indenture and Agreement before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgments, to the intent that the same may be duly recorded.

{March 16, 1939 } 37. After the death of the Donor and his wife, there shall not be paid from the Foundation funds more than Five Thousand (\$5,000) Dollars a year to any one teacher, and not more than three (3) teachers shall be employed and paid for with Foundation funds.

{January 24, 1940 } 38. That beginning as of January 1st, 1940, the Barnes Foundation shall pay in equal quarterly installments to John Dewey, the sum of Five thousand dollars (\$5,000) per annum, for the balance of his life.

{April 15, 1942 } 39. That beginning as of June 1, 1947, the Barnes Foundation shall pay in equal monthly installments to Laurence Buermyer, the sum of eighteen hundred dollars (\$1,800) per annum, for the balance of his life. During the lifetime of the Donor, the Donee shall have power and authority, by resolution of a majority of its Board of Trustees, to make any change from time to time in the amount of the compensation herein provided. Such power shall cease upon the death of the Donor.

{October 20, 1950 } **ARTICLE X - AMENDMENTS** The following by-laws of the corporation are unamendable and shall never be amended in any manner whatsoever, viz: Article I, Article II, Article IV, Article V, Article IX, except that upon the execution of any written agreement between Albert C. Barnes and this corporation modifying, amending or supplementing the original Indenture and Agreement, dated the sixth day of December, A.D. 1922 or any supplement thereto, said Articles of the Bylaws shall be amended to accord with and conform to said written Agreement. All the other articles of these by-laws may be amended at an annual or stated meeting by resolution if notice of the proposed change therein shall have been mailed or handed to each member of the Board of Trustees at least ten days before the date of the meeting at which it is proposed such amendment shall be acted upon, and such amendment shall only be carried by the affirmative vote of a majority of the Trustees then in office.

APPENDIX B. ICOM CODE OF PROFESSIONAL ETHICS: *SELECT STATUTES*

I. Preamble

The ICOM Code of Professional Ethics was adopted unanimously by the 15th General Assembly of ICOM meeting in Buenos Aires, Argentina on 4 November 1986.

It provides a general statement of professional ethics, respect for which is regarded as a minimum requirement to practise as a member of the museum profession. In many cases it will be possible to develop and strengthen the Code to meet particular national or specialized requirements and ICOM wishes to encourage this. A copy of such developments of the Code should be sent to the Secretary General of ICOM, Maison de l'UNESCO, 1 rue Miollis, 75732 Paris Cedex 15, France.

For the purposes of Articles 2 para. 2, 9 para. 1(d), 14 para. 17(b), 15 para. 7(c), 17 para. 12(e) and 18 para. 7(d) of the ICOM Statutes, this Code is deemed to be the statement of professional ethics referred to therein.

II. Institutional Ethics

2. Basic Principles for Museum Governance

2.1. Minimum Standards for Museums

The governing body or other controlling authority of a museum has an ethical duty to maintain, and if possible enhance, all aspects of the museum, its collections and its services. Above all, it is the responsibility of each governing body to ensure that all of the collections in their care are adequately housed, conserved and documented.

The minimum standards in terms of finance, premises, staffing and services will vary according to the size and responsibilities of each museum. In some countries such minimum standards may be defined by law or other government regulation, and, in others, guidance on and assessment of minimum standards is available in the form of "Museum Accreditation" or similar schemes. Where such guidance is not available locally, it can usually be obtained from appropriate national and international organizations and experts, either directly or through the National Committee or appropriate International Committee of ICOM.

2.2. Constitution

Each museum should have a written constitution or other document setting out clearly its legal status and permanent, non-profit nature, drawn up in accordance with appropriate national laws in relation to museums, the cultural heritage, and non-profit institutions. The governing body or other controlling authority of a museum should prepare and publicize a clear statement of the aims, objectives and policies of the museum, and of the role and composition of the governing body itself.

2.3. Finance

The governing body holds the ultimate financial responsibility for the museum and for the protecting and nurturing of its various assets: the collections and related documentation, the premises, facilities and equipment, the financial assets, and the staff. It is obliged to develop and define the purposes and related policies of the institution, and to ensure that all of the museum's assets are properly and effectively used for museum purposes. Sufficient funds must be available on a regular basis, either from public or private sources, to enable the governing body to carry out and develop the work of the museum. Proper accounting procedures must be adopted and maintained in accordance with the relevant national laws and professional accountancy standards.

2.4. Premises

The board has especially strong obligations to provide accommodation giving a suitable environment for the physical security and preservation of the collections. Premises must be adequate for the museum to fulfil within its stated policy its basic functions of collection, research, storage, conservation, education and display, including staff accommodation, and should comply with all appropriate national legislation in relation to public and staff safety. Proper standards of protection should be provided against such hazards

as theft, fire, flood, vandalism and deterioration, throughout the year, day and night. The special needs of disabled people should be provided for, as far as practicable, in planning and managing both buildings and facilities.

2.5. Personnel

The governing body has a special obligation to ensure that the museum has staff sufficient in both number and kind to ensure that the museum is able to meet its responsibilities. The size of the staff, and its nature (whether paid or unpaid, permanent or temporary), will depend on the size of the museum, its collections and its responsibilities. However, proper arrangements should be made for the museum to meet its obligations in relation to the care of the collections, public access and services, research, and security.

The governing body has particularly important obligations in relation to the appointment of the director of the museum, and whenever the possibility of terminating the employment of the director arises, to ensure that any such action is taken only in accordance with appropriate procedures under the legal or other constitutional arrangements and policies of the museum, and that any such staff changes are made in a professional and ethical manner, and in accordance with what is judged to be the best interests of the museum, rather than any personal or external factor or prejudice. It should also ensure that the same principles are applied in relation to any appointment, promotion, dismissal or demotion of the personnel of the museum by the director or any other senior member of staff with staffing responsibilities.

The governing body should recognize the diverse nature of the museum profession, and the wide range of specializations that it now encompasses, including conservator/restorers, scientists, museum education service personnel, registrars and computer specialists, security service managers, etc. It should ensure that the museum both makes appropriate use of such specialists where required and that such specialized personnel are properly recognized as full members of the professional staff in all respects.

Members of the museum profession require appropriate academic, technical and professional training in order to fulfil their important role in relation to the operation of the museum and the care for the heritage, and the governing body should recognize the need for, and value of, a properly qualified and trained staff, and offer adequate opportunities for further training and re-training in order to maintain an adequate and effective workforce.

A governing body should never require a member of the museum staff to act in a way that could reasonably be judged to conflict with the provisions of this Code of Ethics, or any national law or national code of professional ethics.

The Director or other chief professional officer of a museum should be directly responsible to, and have direct access to, the governing body in which trusteeship of the collections is vested.

III. Professional Conduct

5. General Principles

5.1. Ethical Obligations of Members of the Museum Profession

Employment by a museum, whether publicly or privately supported, is a public trust involving great responsibility. In all activities, museum employees must act with integrity and in accordance with the most stringent ethical principles as well as the highest standards of objectivity.

An essential element of membership of a profession is the implication of both rights and obligations. Although the conduct of a professional in any area is ordinarily regulated by the basic rules of moral behaviour which govern human relationships, every occupation involves standards, as well as particular duties, responsibilities and opportunities that from time to time create the need for a statement of guiding principles. The museum professional should understand two guiding principles: first, that museums are the

object of a public trust whose value to the community is in direct proportion to the quality of service rendered; and, secondly, that intellectual ability and professional knowledge are not, in themselves, sufficient, but must be inspired by a high standard of ethical conduct.

The Director and other professional staff owe their primary professional and academic allegiance to their museum and should at all times act in accordance with the approved policies of the museum. The Director or other principal museum officer should be aware of, and bring to the notice of the governing body of the museum whenever appropriate, the terms of the ICOM Code of Professional Ethics and of any relevant national or regional codes or policy statements on museum ethics, and should urge the governing body to comply with these. Members of the museum profession should also comply fully with the ICOM Code and any other codes or statements on museum ethics whenever exercising the functions of the governing body under delegated powers.

5.2. Personal conduct

Loyalty to colleagues and to the employing museum is an important professional responsibility, but the ultimate loyalty must be to fundamental ethical principles and to the profession as a whole.

Applicants for any professional post should divulge frankly and in confidence all information relevant to the consideration of their applications, and if appointed should recognize that museum work is normally regarded as a full-time vocation. Even when the terms of employment do not prohibit outside employment or business interests, the Director and other senior staff should not undertake other paid employment or accept outside commissions without the express consent of the governing body of the museum. In tendering resignations from their posts, members of the professional staff, and above all the Director, should consider carefully the needs of the museum at the time. A professional person, having recently accepted a new appointment, should consider seriously his/her professional commitment to his/her present post before applying for a new post elsewhere.

5.3. Private Interests

While every member of any profession is entitled to a measure of personal independence, consistent with professional and staff responsibilities, in the eyes of the public no private business or professional interest of a member of the museum profession can be wholly separated from that of the professional's institution or other official affiliation, despite disclaimers that may be offered. Any museum-related activity by the individual may reflect on the institution or be attributed to it. The professional must be concerned not only with the true personal motivations and interests, but also with the way in which such actions might be construed by the outside observer. Museum employees and others in a close relationship with them must not accept gifts, favours, loans or other dispensations or things of value that may be offered to them in connection with their duties for the museum.

Source: <http://www.icom.org/ethics.html>

APPENDIX C. AAM CODE OF ETHICS FOR MUSEUMS *SELECT STATUTES*

Introduction

Ethical codes evolve in response to changing conditions, values, and ideas. A professional code of ethics must, therefore, be periodically updated. It must also rest upon widely shared values. Although the operating environment of museums grows more complex each year, the root value for museums, the tie that connects all of us together despite our diversity, is the commitment to serving people, both present and future generations. This value guided the creation of and remains the most fundamental principle in the following Code of Ethics for Museums.

Code of Ethics for Museums

Museums make their unique contribution to the public by collecting, preserving, and interpreting the things of this world. Historically, they have owned and used natural objects, living and nonliving, and all manner of human artifacts to advance knowledge and nourish the human spirit. Today, the range of their special interests reflects the scope of human vision. Their missions include collecting and preserving, as well as exhibiting and educating with materials not only owned but also borrowed and fabricated for these ends. Their numbers include both governmental and private museums of anthropology, art history and natural history, aquariums, arboreta, art centers, botanical gardens, children's museums, historic sites, nature centers, planetariums, science and technology centers, and zoos. The museum universe in the United States includes both collecting and noncollecting institutions. Although diverse in their missions, they have in common their nonprofit form of organization and a commitment of service to the public. Their collections and/or the objects they borrow or fabricate are the basis for research, exhibits, and programs that invite public participation.

Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited. It is also incumbent upon them to preserve that inheritance for posterity.

Museums in the United States are grounded in the tradition of public service. They are organized as public trusts, holding their collections and information as a benefit for those they were established to serve. Members of their governing authority, employees, and volunteers are committed to the interests of these beneficiaries. The law provides the basic framework for museum operations. As nonprofit institutions, museums comply with applicable local, state, and federal laws and international conventions, as well as with the specific legal standards governing trust responsibilities. This Code of Ethics for Museums takes that compliance as given. But legal standards are a minimum. Museums and those responsible for them must do more than avoid legal liability, they must take affirmative steps to maintain their integrity so as to warrant public confidence. They must act not only legally but also ethically. This Code of Ethics for Museums, therefore, outlines ethical standards that frequently exceed legal minimums.

Loyalty to the mission of the museum and to the public it serves is the essence of museum work, whether volunteer or paid. Where conflicts of interest arise (actual, potential, or perceived) the duty of loyalty must never be compromised. No individual may use his or her position in a museum for personal gain or to benefit another at the expense of the museum, its mission, its reputation, and the society it serves.

For museums, public service is paramount. To affirm that ethic and to elaborate its application to their governance, collections, and programs, the American Association of Museums promulgates this Code of Ethics for Museums. In subscribing to this code, museums assume responsibility for the actions of members of their governing authority, employees, and volunteers in the performance of museum-related duties. Museums, thereby, affirm their chartered purpose, ensure the prudent application of their resources, enhance their effectiveness, and maintain public confidence. This collective endeavor strengthens museum work and the contributions of museums to society (present and future).

Governance

Museum governance in its various forms is a public trust responsible for the institution's service to society. The governing authority protects and enhances the museum's collections and programs and its physical, human, and financial resources. It ensures that all these resources support the museum's mission, respond to the pluralism of society, and respect the diversity of the natural and cultural common wealth.

Thus, the governing authority ensures that: all those who work for or on behalf of a museum understand and support its mission and public trust responsibilities

its members understand and fulfill their trusteeship and act corporately, not as individuals

the museum's collections and programs and its physical, human, and financial resources are protected, maintained, and developed in support of the museum's mission

it is responsive to and represents the interests of society

it maintains the relationship with staff in which shared roles are recognized and separate responsibilities respected

working relationships among trustees, employees, and volunteers are based on equity and mutual respect

professional standards and practices inform and guide museum operations

policies are articulated and prudent oversight is practiced

governance promotes the public good rather than individual financial gain.

Source: <http://www.aam-us.org/aamcoe.htm>